



Press Summary

1 July 2026

Skatteforvaltningen (The Danish Customs and Tax Administration) (Appellant) v MCML Ltd (previously known as ED&F Man Capital Markets Ltd) (Respondent)

[2026] UKSC 19

On appeal from: [2025] EWCA Civ 371

Justices: Lord Sales (Deputy President), Lord Lloyd-Jones, Lady Rose, Lady Simler, Lord Doherty

Background to the Appeal

The doctrine of issue estoppel prevents a party in litigation from raising an issue of law or fact which has been litigated and decided in previous proceedings between the same parties. This appeal concerns the scope of the doctrine of issue estoppel and the circumstances in which it may arise.

In particular, the question is whether a claim brought by the appellant (“**SKAT**”) against the respondent (“**EDFM**”) in 2022 is barred by issue estoppel because of the dismissal of an earlier claim brought by SKAT against EDFM in 2018.

SKAT is the Danish Customs and Tax Administration. At the relevant time, Danish law imposed a tax on dividends paid by a Danish company. This tax operated on a withholding basis, meaning that the tax was deducted before payment of the dividend to shareholders. Some non-Danish shareholders were entitled under double taxation treaties not to be taxed, or not to be taxed at the full rate, on dividend income. This was given effect by the shareholders having a right under Danish law to be refunded the withholding tax that had been deducted from their dividends by SKAT.

EDFM was a financial brokerage business. It issued tax vouchers to clients, which were then used by its clients to support applications to SKAT for withholding tax refunds. In 2018, SKAT brought a claim (“**the 2018 Claim**”) in the Commercial Court in England and Wales against 114 defendants, including EDFM. In the claim against EDFM, SKAT alleged that EDFM had made negligent misrepresentations in tax vouchers, which resulted in SKAT paying out refunds of withholding tax to people who had no entitlement to the refunds.

The claims were struck out following a preliminary trial by the judge, Andrew Baker J, who found that the claims were inadmissible under the “Revenue Rule”. This is a common law rule

which prevents an English court from hearing a claim brought by a foreign state to collect tax. SKAT successfully appealed this decision against the other defendants, with the Court of Appeal finding that the claims were not barred by the Revenue Rule. The Supreme Court affirmed the Court of Appeal's decision. Andrew Baker J's ruling was found to be wrong in law.

However, although SKAT had appealed against Andrew Baker J's judgment relying on another ground of appeal (on which it lost in the Court of Appeal), it chose not to appeal against EDFM on the ground that the judge had erred in holding that the Revenue Rule was applicable. The result of this was that Andrew Baker J's finding that the Revenue Rule barred SKAT's claim against EDFM was final in the 2018 proceedings against EDFM.

In 2022, SKAT issued a second claim against EDFM ("**the 2022 Claim**"). The 2022 Claim is also based on misrepresentations having been made by EDFM in tax vouchers (all but five of them being tax vouchers SKAT relied on in the 2018 proceedings). SKAT now alleges that EDFM made those representations fraudulently, rather than negligently, for the purpose of inducing SKAT to pay withholding tax refunds to its clients who were not entitled to those refunds.

EDFM applied for the 2022 Claim to be struck out. It argued that the issue whether it was liable to SKAT for incorrect statements in the tax vouchers had already been litigated in the 2018 proceedings and it had been determined by Andrew Baker J that EDFM was not so liable, because the Revenue Rule covered the case. As SKAT did not appeal that ruling, Andrew Baker J's judgment was final and binding to the effect that EDFM was not liable to SKAT for incorrect statements in the tax vouchers. That was true, EDFM said, in respect of the new fraud claims based on the tax vouchers and even in respect of the five new tax vouchers, because the logic of the judge's reasoning that the Revenue Rule governed SKAT's claims must inevitably have extended to those claims and those vouchers as well. EDFM therefore argued that SKAT was barred by issue estoppel from raising claims based on incorrect statements in the tax vouchers against EDFM in subsequent litigation, including in the 2022 Claim.

EDFM's application to strike out the 2022 Claim was heard by Bright J. He held that the 2018 Claim and 2022 Claim involved different causes of action and different factual allegations, and so no issue estoppel arose.

The Court of Appeal allowed EDFM's appeal. A majority of the Court of Appeal concluded that the issue determined by Andrew Baker J regarding the applicability of the Revenue Rule, which was not appealed by EDFM, created an issue estoppel which prevented SKAT from pursuing the 2022 Claim. The majority considered that the issue determined by Andrew Baker J for the purposes of issue estoppel was that all private law claims to recover withholding tax refunds paid by SKAT based on applications conveying incorrect information were inadmissible under the Revenue Rule. So defined, this issue estoppel covered all the claims and the tax vouchers (including the five new vouchers) which were the subject of the 2022 Claim. That claim should therefore be struck out.

Nugee LJ entered a partial dissent. He would have held that the 2022 Claim was only barred by issue estoppel where the same tax vouchers were common to both claims, so the claim in relation to the five new vouchers was not covered and should not be struck out.

SKAT appealed to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lord Sales and Lord Doherty give the judgment, with which Lord Lloyd-Jones, Lady Rose and Lady Simler agree.

Reasons for the Judgment

Issue estoppel has the effect of restricting or denying a litigant's access to court to vindicate what is otherwise a good claim. It may also prevent a litigant from raising what is otherwise a good defence to a claim made against them. It is a serious interference with the ordinary right of litigants to present their claims and to defend themselves. The courts have therefore been careful to ensure that the doctrine is kept within narrow limits [37].

The legal principles governing when an issue estoppel arises are: first, the issue decided in the prior proceedings must have been necessary and fundamental to the judgment in those proceedings in order to give rise to an issue estoppel; secondly, in deciding whether an issue was necessary and fundamental to that judgment, whether the issue arose on the parties' pleadings in the prior civil proceedings is critical; thirdly, it is only the immediate foundation of the judgment which can give rise to an issue estoppel, and not elements of the prior court's reasoning leading up to the decision [39]-[43].

It would be unjust for a party to be barred by an issue estoppel on elements of the prior court's reasoning which went wider than was necessary to determine the case before it. The scope of an issue estoppel should not depend upon how widely or narrowly a judge chooses to frame the reasoning in their judgment [46]. Moreover, as a practical matter, litigants should not be expected nor incentivised to spend time and effort litigating points which are not important to the first set of proceedings in case they become relevant in later proceedings [47].

This reasoning is strengthened by considering the doctrines of abuse of process and of precedent.

Abuse of process can bar a claim if one party chooses not to raise a point in a first set of proceedings and seeks to raise it later. This is a regulatory doctrine which operates flexibly and is sensitive to wider considerations and the interests of both parties. It seeks to achieve overall justice between the parties. Issue estoppel operates inflexibly, and if given a wider interpretation, it would cut across the rules on abuse of process. Abuse of process provides the appropriate framework for regulating what has happened in this case. EDFM accepts that SKAT's bringing of the 2022 Claim did not involve an abuse of process [48].

Under the doctrine of precedent, courts are bound to follow the ruling of an appellate court on a particular point of law. But a litigant in later proceedings may nonetheless be entitled to seek to distinguish the precedent or argue that it may be qualified or overturned. There is no such possibility with an issue estoppel, subject to a narrow special circumstances exception. For this reason, the interpretative process for identifying the ratio decidendi of a previous decision (its core binding element) for the purposes of the doctrine of precedent is not the same as the process for identifying the immediate foundation of a decision for the purposes of issue estoppel. Conflating the two processes would undermine the coherence of the law and displace the doctrine of precedent inappropriately [38], [49].

These considerations underpin the emphasis upon the narrow operation of the doctrine of issue estoppel from the time of the earliest cases when it was first recognised. The caselaw demonstrates that the scope of an issue estoppel is not to be enlarged by inference, deduction, or argument based on the reasoning set out in the prior decision, and that it is not to be expanded to cover another set of facts, even if the factual differences are not material in law [50]-[51].

Application to the Present Case

The formulation of the relevant issue on which an estoppel arose by the majority of the Court of Appeal is inconsistent with the above principles [53]. The factual and legal bases of the 2022 Claim are not matters which were in issue in the 2018 proceedings against EDFM [54].

The relevant facts pleaded in the 2018 Claim were the allegations that EDFM made negligent misrepresentations in the applications for refunds of withholding tax. What was in dispute in

the 2018 Claim was whether the statements were misrepresentations which were made negligently and, if so, whether such negligent misrepresentations fell within the scope of the Revenue Rule. This required Andrew Baker J to determine the legal quality, or effect in law, of the negligent misrepresentations [44]-[45].

The 2022 Claim contains different allegations, that the relevant misrepresentations were made fraudulently. What is in dispute, therefore, is whether the statements were fraudulent misrepresentations and, if so, whether such misrepresentations fall within the scope of the Revenue Rule. These matters were not addressed in the judgment on the 2018 Claim because those allegations were not made in SKAT's pleaded case [44]-[45].

The majority were therefore wrong to formulate the issue to cover all private law claims to recover tax refunds paid by SKAT based on applications conveying incorrect information. This issue was not necessary or fundamental to the proceedings before Andrew Baker J, nor was it the immediate foundation of his judgment [55]. Nugee LJ's formulation of the issue, which was tethered to the particular tax vouchers which were the subject of the 2018 Claim, suffers from the same problems as the majority [58].

It follows that the 2022 Claim should not have been struck out, and the appeal is allowed [59].

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](#)