



Appeal number: TC/2011/10206
MAN/2007/0306

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THOMAS HOLDINGS LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE JONATHAN RICHARDS

**Sitting in public at The Royal Courts of Justice, Strand, London on 22
September 2015**

Having heard Ben Elliott of Counsel for the Appellant and Bruce Robinson, Officer of HM Revenue & Customs for the Respondents.

IT IS DIRECTED that

1. The appeal before the Tribunal in *Thomas Holdings Limited v HM Revenue & Customs* (MAN/2007/0306) (the “First Appeal”) is currently stayed behind the appeal before this Tribunal in *Rank Group plc v HM Revenue & Customs* (LON/2006/00875) (“*Rank*”). That stay shall cease to have effect and shall be replaced by the stay set out in Direction 2.

2. The First Appeal and the appeal before this Tribunal in *Thomas Holdings Limited v HM Revenue & Customs* (TC/2011/1206) (the “Second Appeal”) shall both be stayed until the later of:

(1) 60 days after the release of the decision of the Upper Tribunal in *Vodafone Group Services Ltd v Commissioners for Her Majesty's Revenue and Customs* (FTC/119/2014) (“*Vodafone*”); and

(2) 60 days after the release of the decision of this Tribunal in *Rank Group plc v HM Revenue & Customs* (LON/2006/00875).

3. Either party may apply at any time for the stay referred to in Direction 2 to be lifted.
4. The First Appeal and the Second Appeal shall be joined and heard together. If either party considers that the First Appeal and the Second Appeal should be consolidated, and not merely joined and heard together, they may apply to the Tribunal accordingly within 21 days (with a copy to the other party) and should indicate in any such application whether it is made with the consent of the other party.
5. Since the question of whether the First Appeal and the Second Appeal should be stayed behind *Rank* was not one that was discussed at the hearing, and is a matter that the Tribunal has raised of its own motion, either party may, within 21 days, submit observations in writing to the Tribunal (with a copy to the other party) as to whether this is appropriate.

Reasons

1. Since I am granting the Appellant the directions for which it applied in an opposed application, I will give reasons for my decision.

Staying behind Rank

2. During the hearing on 22 September 2015, the Appellant requested only that (i) the First Appeal and Second Appeal be joined and heard together and (ii) the Second Appeal be stayed behind *Vodafone*. For the reasons set out at [5] to [12] below, I consider that these are appropriate directions for the Tribunal to make.
3. However, following the hearing, I became aware that the First Appeal is currently stayed behind *Rank*. Moreover, in order for a direction that the First Appeal and the Second Appeal be joined and heard together to be capable of practical operation, both the First Appeal and the Second Appeal need to be stayed behind the same case or cases.
4. Having heard the submissions of the parties during the hearing, I consider that it remains appropriate for the First Appeal to be stayed behind *Rank*. Therefore, I consider that Direction 2 is appropriate as it will firstly enable the First Appeal and the Second Appeal to be joined and heard together and secondly will enable the Tribunal to have the benefit of both the *Rank* and *Vodafone* decisions when hearing the joined appeals.

The application for the two appeals to be joined and heard together

5. I have accepted Mr Elliott's submissions that the Second Appeal involves a consideration, following the decision of the Upper Tribunal in *Reed Employment plc v Revenue and Customs Commissioners* [2009] EWHC (Ch) 1244, of whether the claim for repayment at issue in the Second Appeal "arises out of the same subject matter" as the claim at issue in the First Appeal. I consider that there is an obvious efficiency for that question to be considered by a single Tribunal that is familiar with both claims

for repayment. That efficiency is further enhanced by the fact that both appeals involve the same tax, the same taxpayer and the same periods.

6. I also accepted Mr Elliott's submission that, if the First Appeal and Second Appeal were heard separately there would be some risk of two separate Tribunals considering the same underlying issue. For example, one of the Appellant's arguments, based on *Vodafone Group Services v Revenue & Customs Commissioners* [2014] UKFTT 701, is that its claim for repayment of VAT associated with mechanised cash bingo ("MCB") and mainstage bingo ("MSB") can be considered as part of the First Appeal. The Second Appeal also deals with the VAT associated with MCB and MSB. It would be undesirable for two separately constituted Tribunals to be considering the appellant's claim relating to MCB and MSB at different times.

7. Mr Robinson submitted that the First Appeal and Second Appeal should be heard separately as they relate to very different issues and the Second Appeal is concerned purely with the application of the Upper Tribunal's decision in *Reed*. I have not accepted that submission as I consider that decision in *Vodafone* referred to at [6] above introduces a potential overlap in subject matter between the two appeals.

8. I therefore allow the Appellant's application for the First Appeal and the Second Appeal to be heard together.

The application for a stay

9. In deciding whether to grant the application for a stay, I have applied the test set out in *Revenue and Customs Commissioners v RBS Deutschland Holdings GmbH* [2007] STC 814. I have therefore considered firstly whether the decision of the Upper Tribunal in *Vodafone* will be of "material assistance in resolving the issues before the Tribunal" (even if it will not be determinative of those issues) and secondly whether it is expedient to grant the stay.

10. I have accepted Mr Elliott's submissions that the decision in *Vodafone* will be of material assistance. That is firstly because, as noted at [6] above, one of the arguments that the Appellant is advancing involves an application of the principle that the First-tier Tax Tribunal set out in *Vodafone*. The Upper Tribunal's decision in *Vodafone*, therefore, will have a direct application to these proceedings. I also agree with Mr Elliott that, since the scope of the decision in *Reed* was in issue before the First-tier Tax Tribunal in *Vodafone*, it is highly likely that the Upper Tribunal will wish to examine the decision in *Reed*. It will be of material assistance to the First-tier Tax Tribunal to know whether or not the decision in *Reed* has been explained, distinguished or followed since the Second Appeal involves a consideration of the *Reed* decision.

11. In opposing the Appellant's application for a stay, Mr Robinson argued that the First Appeal and the Second Appeal cover different ground and that the Second Appeal involves only an application of the decision in *Reed*. He submitted that *Vodafone* was wrongly decided and was of no relevance. I have not accepted those submissions. The way that the Appellant has chosen to formulate its arguments means that *Vodafone* is relevant to these appeals. Therefore knowing whether it was, or was not, wrongly decided will be of material assistance to the Tribunal considering these appeals.

12. That then leaves the question of whether it is expedient to stay the appeals. I consider that it is. Mr Elliott submitted, and Mr Robinson did not disagree, that the appeals will involve largely agreed facts. Therefore, the risk of witnesses' memories fading during the period the appeals are stayed is slight. In any event, the Upper Tribunal is due to hear the Vodafone appeal in December 2015, so the appeals are unlikely to be stayed for a lengthy period.

13. I therefore consider that the Appellant's application for a stay should be allowed.

14. It follows that I am allowing both parts of the Appellant's application. In my reasons set out above, I have referred to certain of Mr Elliott's submissions which I consider were sufficient on their own to justify granting the applications. The fact that I have not referred to other submissions he made should not be taken as an indication that I rejected them.

**JONATHAN RICHARDS
TRIBUNAL JUDGE**

RELEASE DATE: 1 OCTOBER 2015

© CROWN COPYRIGHT 2015