

Court of Appeal Landfill tax win

The Court of Appeal has dismissed an appeal by HMRC against a decision which allowed a landfill tax judicial review to proceed in advance of tribunal appeals in relation to the same tax. **Philippa Whipple QC** acted for two of the landfill site operators, instructed by PwC. *R (Veolia and Others) v HMRC* [2015] EWCA Civ 747.

Background: On 22 December 2008, HMRC published Revenue and Customs Brief 58/08, in which HMRC invited landfill tax claims on “fluff” and other materials used to protect from damage any geosynthetic produced used for landfill containment. Many landfill site operators put in claims, and negotiated with HMRC to agree the quantum of the claims. Some claims were repaid. Then RCB 58/08 was suddenly withdrawn (and the policy reversed) by Revenue and Customs Brief 02/14 published on 23 January 2014, in which HMRC said that in light of an internal review, no more fluff claims would be paid.

A number of landfill site operators commenced judicial reviews challenging HMRC’s refusal to pay their claims. The essence of the JRs was the landfill tax operators’ legitimate expectation, based on RCB 58/08, that their claims would be met. Thirlwall J granted permission to the landfill site operators and set directions for the judicial review. HMRC appealed that case management decision, arguing that the JRs should be stayed pending extensive tribunal litigation which (HMRC said) would test the scope and meaning of the landfill tax legislation, and which should go first. The Court of Appeal did not agree. Arden LJ, giving the leading judgment, recognised that the landfill site operators were entitled to pursue a judicial review, and could only be restrained from doing so if there was a good reason, which HMRC had not made out in this appeal.

Comment: tax litigation often involves parallel proceedings, with public law challenges brought by way of judicial review alongside technical tax arguments brought by an appeal to the tribunal. This decision clarifies the Court’s approach to the issue of which set of proceedings should go first. In the end, it depends on the facts and issues in the particular case. But a good reason has to be shown before a claimant can be shut out of proceedings which it chooses to pursue.