Landmark Decision concerning ATMs in the UK Supreme Court

It was back in 2009/10 that the Valuation Office Agency undertook enquiries about bringing into assessment ATM machines following two cases in Scotland. This was despite a case Stringer (VO) v J Sainsbury Plc [1992] RA 16 being considered by the then Lands Tribunal in 1992 on not dissimilar issue. A lot has happened since both in terms of the approach to how we shop, increased used of "tap and go" and how cash is handled at stores and through the ATM itself.

The VOA's first action, much to the consternation and bemusement of ratepayers, was to separately assess ATM machines and to reconstitute the "host" hereditament. As the subject of these appeals was both controversial and complex, the matter was subject to special directions from the Valuation Tribunal for England (VTE) and the matter proceeded to a hearing on 11 February 2016 before the VTE Vice President, Alf Clark. In rather unusual circumstances, the appeals were heard by the VTE at the Rolls Building in London, with no less than 27 people representing the interests of the appellants and an entourage of VOA representatives. The outcome being that the Tribunal dismissed the ratepayer appeals.

The matter then proceeded on appeal by way of a de novo hearing to the Upper Tribunal (Lands Chamber) (UTLC) and a hearing before Martin Rodger QC, Deputy Chamber President and Valuer Member Andrew Trott FRICS, lasting 3 days in January 2017. The UTLC determined that the sites of ATMs were capable of being separate hereditaments, but the sites of in-store ATMs were in the rateable occupation of the store operator and therefore formed part of the store hereditament. Insofar as the sites of the outward-facing "hole in the wall" ATMs were concerned, these were in the occupation of the banks and not the store and therefore they should be assessed as separate hereditaments.

The matter continued rumbling on and progressed to the Court of Appeal in November 2018 The Court held that externally located ATMs (e.g. those on the outward-facing walls of premises) were not separate hereditaments for rating purposes. Therefore, they did not give rise to a separate business rates liability. In its judgment, the Court of Appeal considered the correct way to identify a hereditament for rating purposes, and the meaning of rateable occupation of a hereditament, to be as follows:

While an ATM itself is non-rateable machinery, it could be taken into account when determining whether a separate hereditament exists. It was not necessary for the site to be specifically adapted for the ATM in order to create a separate hereditament

- applying the principle of "general control" (the Westminster case), it considered that the involvement of the store in the operations room retained sufficient control of the ATM site (in contractual, physical and functional terms) that it (i.e. the store) should be treated as being in rateable occupation as the paramount occupier, not the bank.

Perhaps it was telling at that stage looking back with hindsight, that permission to appeal was refused by the Court of Appeal but the Valuation Officer felt this was an important point of principle in law and proceeded to seek the permission of the United Kingdom Supreme Court (UKSC) to appeal the decision and a hearing took place over two days 11th / 12th March 2020.

The 20th May 2020, however, may well go down in the annals of rating law and practice as a defining day, having said that looking back in history the same date has some interesting events including the 2nd Battle of Lincoln in 1217 and in 1970 the Beatles' movie premier in the UK of "Let it be".

The outcome of the UKSC judgement draws on the findings of fact in the Upper Tribunal (Lands Chamber) and the approach to the application of the law considered by the Court of Appeal in dismissing the case of the Valuation Officer.

There were two aspects to the argument, firstly are the sites of the ATMs capable of identification as separate hereditaments. There were two elements to this approach, the first being boundaries between a hereditament and a piece of machinery (ATM) and thus that the ATM should be ignored and given that it was not possible to define the area of the supported hereditament, the geographical test could not be satisfied.

The second aspect was the fact that the ATM itself was not capable of being assessed with the VOA seeking to rely upon an assessment for the site on which it sat. In addressing the outcome of the case the UKSC reviewed a raft of rating case law and considered the principle argument for the ratepayer that the relationship between the service of providing access to an ATM (Cash) and the general retail taking place from the store were complimentary to each

other. The judgement also draws on other practical aspects including the treatment of photo booths and coin change machines. There is a distinction within the judgement about the difference between the ATMs and the decision concerning a bookstall at a railway station aka Southern Railway which dates back to a case in 1936.

The UKSC has considered in detail the findings of the Court of Appeal and agrees that the Upper Tribunal (Lands Chamber) erred in law by applying a "unduly narrow approach". It is perhaps also telling that the UKSC restated views from another recent case that:

"the rating system has a very long history. As a fair and effective method of taxing property of all kinds, it has proved remarkably resilient and adaptable to technological developments and new forms of property."

It goes on to say that *"although the core concepts are well-undertstood, they have not always proved susceptible to precise formulation, as indeed he observed of the term hereditament"*.

So the outcome from this landmark judgement are that separate assessment of ATMs at a range of retail sites across England will be deleted. It is likely also that some other offerings such as coin machines and photo booths may be removed from the rating list too . There are also likely to be some questions raised as to what the future may hold given that the outcome of the case is likely to leave both central and local government nursing lost revenue estimated to be in the order of £500m. It should also be noted that a large number of cases were stayed pending the outcome of the judgement and in the coming weeks and months corrections to the rating list will likely follow.

The full judgement can be found via the following link:
https://www.supremecourt.uk/cases/uksc-2018-0225.html

Andrew Hetherton MRICS IRRV (Hons) Cert Ed

Director – Andrew Hetherton Consulting Ltd

IRRV President

@andrewhetherton

Blog: https://irrvpresidenthetherton.blogspot.com/

07484136138

andrewhethertonconsultingltd@btinternet.com