



**TC04306**

**Appeal number: TC/2013/07424**

*VAT – Input tax – deductibility of input tax - supply to taxable person for purposes of business carried on or to be carried on - supply for purpose of business - subjective test - onus of proof on taxpayer - appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**FOLKESTONE HARBOUR (GP) LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT  
MR JOHN ROBINSON**

**Sitting in public at Fox Court, Grays Inn Road, London on 10 and  
11 February 2015**

**Philippa Whipple QC, instructed by KPMG, for the Appellant**

**Rita Pavely, Officer of HMRC, for the Respondents**

## DECISION

### Introduction

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1. This appeal is brought by Folkestone Harbour (GP) Limited (“FHGP”) against the decision of the Respondents (“HMRC”) dated 14 May 2013 to disallow VAT as input tax claimed on the costs associated with the construction of a “pavement fountain” in what is now Fountain Square, Folkestone. In consequence thereof, HMRC issued an assessment dated 9 July 2013 for the recovery of that input tax in the sum of £89,193 together with interest of £4,714.52.

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2. That decision was subsequently upheld on review by HMRC on 30 September 2013. The conclusion therein read as follows:

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“On the facts and documentation made available to me I cannot identify a nexus between the expenditure on the fountain and the planned redevelopment of the harbour. The Company has in my view failed to establish that the expenditure on the fountain was for the purposes of its business. Therefore the Company has no right to VAT recovery...”

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3. FHGP submitted a notice of appeal on 28 October 2013 on the basis that:

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“...it had satisfied the business purpose test within Section 24(1) of VATA 1994 as there is an obvious and clear link between the fountain... and the business of the Appellant, and that the input tax incurred on the construction of the fountain should be fully recoverable.”

4. There is no dispute in regard to the applicable legal principles and no challenge to what we describe as the “Background”. It is the interpretation thereof that is in issue.

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### The Evidence

5. For FHGP, we heard from Mr Minter for FHGP, Mr Leatherland from Farrells and Mr Clark formerly from Sviluppo and now from Capita. The witness statement of Mr Fraser from Capita was not contested (other than the conclusion as to the deductibility of the expenditure) and was taken as read as was that of Mr Lotbinière of Savills.

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6. For HMRC we heard from Officer Hamilton, as it was he who made the disputed decision.

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7. We had copies of all of the relevant correspondence between the parties and their representatives, together with the Concept Masterplan (and draft thereof), planning applications, Design and Access Statements from Holloways and Farrells, Design Guidelines, Planning Officer’s recommendations, policy documents in the public domain and other miscellaneous papers extending to four large Bundles.

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8. Lastly, the Bundle of Authorities included copies of Legislation, Case Law and HMRC Guidance. We annex at Appendix 1 the details thereof.

## The Legislation

9. The deductibility of input tax is governed by the Principal VAT Directive (“PVD”) and the relevant UK legislation is predominantly contained in Value Added Tax Act 1994 (“VATA”).

### *The Directive*

10. PVD Article 168 provides:

“in so far as the goods and services are used for the purposes of the taxed transactions of the taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

- (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person...”.

### *Domestic law*

11. Section 24(1) VATA provides:

“Subject to the following provisions of this section, ‘input tax’, in relation to a taxable person, means the following tax, that is to say - (a) the VAT supplied to him of any goods or services;

...

- being (in each case) goods or services used ought to be used for the purpose of any business carried on or to be carried on by him.”

12. Section 25(2) VATA provides the right of deduction of input tax:

- “Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount of any output tax that is due from him.”

13. Section 26 VATA provides, so far as is relevant:

“(1) the amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for that period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to suppliers within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course of the evidence of his business-

(a) taxable supplies;”.

## Summary of the Arguments

14. At its most basic, the issue can be very simply put: HMRC took the view that they did “... not believe that the fountain which does not lie within the potential harbour redevelopment site, has an obvious business purpose”. Accordingly the input tax on the fountain was not incurred for business purposes. FHGP disagree.

*The Appellant*

15. FHGP relies on Section 24(1) VATA and asserts that it has satisfied the business purpose test within this legislation.

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16. FHGP's business consists of the Folkestone Seafront redevelopment: it is the Developer within that project albeit it is facilitating and masterminding the development as opposed to developing it itself.

17. The fountain was an important part of the overall business strategy to ensure the commercial success of the redevelopment. The fountain was placed at the entrance of the development to mark the "front door" of the new Folkestone Seafront and to "place-make".

18. The VAT incurred on the construction of the fountain should be fully recoverable as it is deductible as input tax, the costs having been incurred for sound business reasons.

19. There is an obvious and clear link between the fountain and the project and therefore the business of the Appellant. This is based on the view that the fountain was built as part of a planned major redevelopment of Folkestone Harbour and Seafront.

20. Their approach has been consistent. At the outset of the correspondence with HMRC, Mr Fraser stated

20. Their approach has been consistent. At the outset of the correspondence with HMRC, Mr Fraser stated

"The constructed fountain has been built as a beacon to kickstart the regeneration of the seafront area and assist with the comprehensive redevelopment of the seafront site. It will provide a marker for the start of the reinvigorated seafront area and should be seen as a significant contribution to 'place making' and the general upgrading and degeneration of the seafront area."

That is still their stance. We note that HMRC refer to that quotation in the review decision.

*HMRC*

21. When addressing the Tribunal in closing submissions, HMRC stated that the only issue is whether or not there is a link to the business.

22. Whilst HMRC accept that the fountain was a part of the overall plan for the area, it is not accepted that there was a business use or benefit.

23. There is no clear connection, or nexus, between the construction of the fountain and the intention to develop the harbour site and make taxable supplies. The construction of the fountain was not a prerequisite for the development and therefore it could not be for business purposes.

24. The fountain is remote from the development area as it is at the opposite side of the harbour from where the development is to take place. The fountain appears to be an extension of a public thoroughfare as it is sited between the pavement and a road. They argued that it is sited on the way out of the town as opposed to being at the entrance to the Harbour.

25. There is no evidence that the fountain is a marketing tool for the development of the site; it was constructed in response to suggestions from the general public and is simply one of a number of projects.

26. Marketing is a matter of promotion and sale whereas the fountain just improved the general amenity in the area. The fountain is not a significant marketing tool because the public perception would not necessarily associate the fountain with the development.

27. It is unlikely that the fountain would persuade an investor to invest in the development site; the two adjacent restaurant plots were purchased before the construction of the fountain.

28. FHGP was not in a position to make any taxable supplies from the Harbour site. There is a long time gap between construction of the fountain and the development proceeding.

### **The Background**

29. On 15 March 2007, FHGP applied for VAT registration and VAT group treatment. It is also the General Partner of another member of the group, Folkestone Harbour Limited Partnership (“FHLP”). FHGP is the representative member for the group. The business activity is variously described in the applications as “Property Development Property Rental” and “Property Development”. The Certificate of Registration for VAT stated that the trade classification was 70110 namely: “Development and Selling of Real Estate”.

30. There are a number of companies in the group and the “brand” as far as the public and press are concerned is “The Folkestone Harbour Company”.

31. The controlling mind of the Group and the sole ultimate shareholder is Sir Roger de Haan. He has extensive other interests. In particular, with his father, he has established The Roger de Haan Charitable Trust, which has invested extensively in Folkestone and the surrounding area.

32. Mr Minter is employed by Sir Roger de Haan and oversees all of his commercial and charitable activities and the companies established to facilitate those activities. His role is to help Sir Roger de Haan deliver the wide range of projects with which he is involved in in Folkestone.

33. Both the Design Guidelines and the second Design & Access Statement produced by Farrells, under the heading “Vision” state:

5 “The plans for the redevelopment of the Harbour and Seafront have sat alongside considerable investment in the town by Roger de Haan through the Roger de Haan Charitable Trust, Creative Foundation and Folkestone Harbour Companies.”

10 34. From the date of registration, the focus of FHGP’s activities, acting as General Partner of FHLP, has been residential and commercial property development in the Folkestone Harbour and Foreshore area (“the Project”). It was, and is, the intention that the Project will generate fully taxable income; namely the freehold sale of newly constructed commercial properties, the first grant of major interest in residential properties and the lease of opted to tax commercial properties.

15 35. HMRC agree that FHGP is a fully taxable trader with no restrictions.

20 36. Like other coastal towns in Kent, Folkestone has suffered long-term problems such as the closure of key industries and infrastructure with resultant long-term unemployment, lack of funding from the public purse and the consequent deterioration and dilapidation of the physical environment.

25 37. The context is that the entire seafront area, in common with many other previously vibrant ports, had suffered a considerable decline. It had lost its identity as the heart of Folkestone, the ferry stopped running in 2000, the railway to the quay ceased running at the same time and has now been decommissioned, the former businesses and leisure activities were no longer economically viable and redundant remnants of the port’s past were very visible. The seafront was physically disconnected from the town and decidedly “rundown”.

30 38. It was widely accepted that there was a very real problem because the town and the seafront, in particular, were “rundown”. Property values were low and not predicted to rise unless change could be engineered.

35 39. There have been previous regeneration proposals but because those relied heavily upon large upfront investment in infrastructure. They had not been implemented and had not moved beyond the planning stage.

40 40. Initially, FHGP had had larger plans, including a possible University Campus and Marina, but the economic downturn in 2008 had its inevitable impact. Accordingly, the current regeneration plans were tailored to meet the new environment.

45 41. In December 2008, Farrells, who specialise in urban design projects, were approached. A key part of the brief to Farrells, at the first discussions in January 2009, was to identify some “early wins” in the public realm as, understandably, there was considerable public and press scepticism as to whether new regeneration plans would actually proceed. The advice given was to demonstrate a commitment to the regeneration early on in the Masterplan process.

42. Farrells produced a Masterplan Strategy document in December 2009 and they were appointed as “Masterplanners” and “Concept Architects” in June 2010. They prepared the first draft of the Concept Masterplan for Folkestone Seafront in December 2010.
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43. The Masterplan was predicated on a gradual incremental approach enabling FHGP to respond to market forces and enable the project to be completed in modest scale phases as necessary.
44. The Concept Masterplan for Folkestone Seafront Report dated January 2011 contained an Overview of what was described as “An Evolving Brief” and that included the following statement:
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- “The principal objective of the master plan should be to obtain a planning consent for the development...In order to be commercially viable, the master plan should provide a framework to re-establish Folkestone's relationship with its seafront and to repair the physical disconnection with the town centre...The master plan should also welcome visitors to the seafront, and provide attractions and related facilities for visitors... the development should be based upon good place making principles of a high-quality public realm, sustainable and organic growth and a diversity of architecture. It should be sub divisible into individual development packages and capable of gradual and pragmatic change and development of multiple stages and phases and capable of being responsive to changes in the market and planning environment.
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45. That document included an aerial photograph, described as “Folkestone Seafront - the site today”, and the “site” was outlined in red thereon. The “site” comprised what is now Fountain Square, the Inner and Outer Harbour, the old railway line and the area on which buildings would be constructed.
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46. At page 73 of that document, new fountain proposals were identified as a possible new focal point for Folkestone.
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47. It was recognised that the financial viability of the project was a crucial factor so in late 2010, Mr Clark was consulted and, on 11 January 2011, Sviluppo was formally engaged by FHGP to produce a Strategic Business Case and Financial Appraisal. Like Farrells, they were explicit about the importance of place-making and high quality public realm in relation to the project. Their advice was that
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- “...the only way that the commercial redevelopment of the Site would be financially viable was if the Developer could achieve a premium to the embedded local residential value.”
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48. Their final report was dated May 2011.
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48. From the outset, Farrells advocated a phased approach centred on implementation of a clear and coherent public realm. At the core of their thinking, was the need to engage with the various stakeholders not least of whom were the local community and the local council. For that reason, there had been extensive public consultation in the period 19 May 2010 to 9 July 2010. A detailed report thereon was produced to FHGP in 2010 and that informed the thinking going forward. The top three design principles for adults which emerged from that consultation were

- “(1) Revitalise the harbour as a lively and vibrant key side area;
- (2) Reconnect the Town Centre with the Seafront; and
- (3) Reinforce the varied landscape character along the Seafront.”

5 49. There has been further consultation since then including a public exhibition in 2011 with Consultation Boards.

10 50. At the end of 2010, Sir Roger de Haan suggested that a fountain in Folkestone could be a central part of the high quality public realm and place-making activities that FHGP were being advised to implement. The construction of a fountain in what is now Fountain Square would meet two of the three design principles identified in the consultations.

51. Shepway District Council estimated in 2010 that, looking at the Masterplan, the timeframe for the development would be 2010-2024 but that that could change.

15 52. The planning process for the Project was expected to be very lengthy and complicated. It was. Although construction of the fountain fitted within the parameters for the local planning policy, unfortunately the planning policy pertaining to the development of the seafront area was out-of-date and required amendment before a planning application could be made for the site and that was predicted to take  
20 a significant amount of time.

53. FHGP decided to act on the advice to be seen to be proactive in regard to place-making and public realm.

25 54. A local firm of architects, Guy Holloway, Architects, were instructed and a planning application for the fountain, dated 10 February 2011, was received by Shepway District Council on 17 February 2011.

55. The Design & Access Statement accompanying that application states under “Proposed Use” – “This will form part of the ongoing regeneration of the harbour area ...”.

56. The Planning Officer’s report relating thereto stated:

30 “The redevelopment of the Square continues the regenerations of the creative quarter. The proposal is also in accordance with the draft Masterplan for the redevelopment of the harbour and seafront ...”.

57. Planning permission was granted on 25 March 2011. The construction of the fountain was completed on 24 June 2011.

35 58. On 29 August 2012, Farrells produced the Folkestone Seafront Design & Access Statement and that, together with considerable further documentation including revised Folkestone Seafront Design Guidelines and Public Realm Design Guidelines, was submitted to Shepway District Council in support of the application for Outline Planning Permission.

59. The planning process for the Project was expected to be very lengthy and complicated. It was. Part of the delay was the requirement to agree an appropriate Section 106 Agreement and that was delayed because the Council was in the course of adopting its new Local Plan, which involved extensive consultation. The Section 106 Agreement was signed on 29 January 2015 and outline planning consent granted a day later.

60. On 23 July 2013, Farrells produced the final Folkestone Seafront Design Guidelines. We annex at Appendix 3 the graphic produced at 2.5 thereof. What is now called Fountain Square is there described as Harbour Square. As can be seen, Harbour Square is immediately beyond the Inner Harbour. It is adjacent to the main access point into the Project. Immediately to the right there is a pedestrian link to be created across the existing viaduct and on the left running along the Inner Harbour, with the Hotel on the other side of the road from it is an area marked PH06. That is intended to be predominantly residential property with provision for retail uses at ground level if viable. The plans provide for a new broadwalk to be constructed in front of that development which will enable continued public access along the edge of the Inner Harbour. These two routes which run directly from what is now Fountain Square provide pedestrian access to Harbourmaster Square, which is one of the main focal points of the Project. The road running down between PH06 and the Hotel is the primary road into the Project.

### **Decision**

61. Mr Hamilton very fairly explained that he had had great difficulty with the decision in this case. His biggest concern had been the distance of the fountain from what he described as the main site. He described it as a very unusual situation and the guidance was very limited so he had very little to draw upon although he had consulted with Policy. In his experience with development sites he would have expected there to be simply one site and any construction would be part of that. The Harbour itself was immediately in front of the Square so in order to access the site one would have to drive down past the hotel and, of course, the Inner Harbour was between Fountain Square and the primary development area. In his view the fountain really was more part of the town than of the Project.

62. We disagree. Certainly one can access the town from Fountain Square. However, in our view it is Janus like. It is, in fact, the connection between the town and the seafront. That is identified very clearly in the Masterplan Strategy dated 7 December 2009 under the heading “4. Re-engage the town centre with the Seafront”. We annex a copy of that graphic at Appendix 2. The area marked with the heart (in an engaging red on the original) is what was then Harbour Square and is now Fountain Square.

63. The parties were poles apart on the question as to whether or not the fountains were an intrinsic part of the project. HMRC’s view was that it was separate and distinct and did not form part of it. We disagree. As we indicate at paragraph 45 above, at the outset, it was clearly identified as part of “the site” in the Concept Masterplan and, of course, so too were both the Inner and Outer Harbour. We

understand why Mr Hamilton may not have considered the Harbours to be part of the site since there would not be buildings thereon but they are an important part of the Project and very close to Fountain Square.

5 64. Mr Minter’s evidence was particularly compelling and we accept it. Firstly, it is quite clear that it was Sir Roger de Haan’s suggestion that there should be a fountain. Secondly, and crucially, having taken advice from experts in the field, FHGP made the decision to invest the significant amount of money in the fountain as they had been convinced that it would constitute high quality public realm contributing to the commercial attractiveness of the development of the site as a whole. Mr Minter was  
10 quite clear and reiterated that it was still his view that

“it was, in our view therefore, a necessary step in the regeneration process to make an investment in the fountain and to attract investors and development partners”.

15 65. The decision to construct the fountain was taken after the professional advice had been carefully considered and we accepted the consistent evidence of these experts.

20 66. Mr Leatherland’s clear evidence was that in the earlier discussions with FHGP it had been agreed that it would be key for the success of the project to win over the hearts and minds of the local community as well as the planning authorities by demonstrating commitment. Fountain Square was identified as a key component. It provided an important visual “stepping stone” between the town and the project and that was hugely important because it had been identified at the outset that one of the key challenges for the viability of the project was making that link. Farrells advice had been that given the likely timescale for planning, interventions, such as the fountain, are essential to build and hold the confidence of the local community and  
25 the local authority. That helps to create change at a manageable level of investment compared to the huge investment required for the Project. Their advice and their view was, and is, that the construction of the fountain was a necessary step in the regeneration process in order to attract the type of investments or development partners which are required.

30 67. Mr Clark was very clear that the advice given to FHGP was that perception and setting is essential in driving the branding and place-making for any proposed mixed used development like the Project and that the fountain was a contributing factor in that. Its construction had been expected to, and had, increased the commercial viability of the Project.

35 68. The decision to construct the fountain was also taken in the context of the feedback from the public consultations which identified the need to revitalise the quayside area and reconnect the town centre with the seafront. As can be seen from the plans Fountain Square is both close to the quayside and connected with the town.

40 69. We accepted Mr Minter’s evidence that FHGP would have preferred to have included the planning application for the fountain in the outline planning application for the whole Project but they could not do so for the reasons set out at paragraph 52 above. They were anxious to maintain momentum, kickstart early place-making and demonstrate their commitment.

70. Mr Minter's evidence was explicit that if there had been an intention to simply improve public amenity then a different vehicle would have been used rather than FHGP. FHGP had incurred the cost because it was seen as an integral part of the Project albeit it was commenced first.

5 71. Both parties were agreed that the approach set out by Justice Stuart-Smith in *Flockton* is the correct approach when considering whether or not an item of expenditure is properly classed as business or non-business expenditure in terms of the legislation. That approach is as follows:-

10 The test is were the goods or services which were supplied to the taxpayer used or to be used for the purpose of any business carried on by him? The test is a subjective one: that is to say, the fact-finding tribunal must look into the taxpayer's mind as it was at the relevant time to discover his object. Where the taxpayer is a company, the relevant mind or minds are those of the person or persons who control the company or are entitled to and do act for the company.

15 In a case such as this, where there is no obvious and clear association between the taxpayer's company's business and expenditure concerned, the Tribunal should approach any assertion that it is for the taxpayer company's business with circumspection and care, and must bear in mind that it is for the taxpayer company to establish its case and the Tribunal should not simply accept the word of the witness, however respectable. It is both permissible and essential to test such  
20 evidence against the standards and thinking of the ordinary business man in the position of the applicant. If they consider that no ordinary business man would have incurred such an expenditure for business purposes that may be grounds for rejecting the taxpayer company's evidence, but they must not substitute that as the test. It is only a guide or factor to take into account when considering the credibility of the witness, and no doubt there will be many other  
25 factors which bear on that question which the Tribunal should well understand.

The Tribunal must look at all the circumstances of the case and draw such inferences as they think fit. In the end it is a question of fact for them whether they were satisfied on the balance of probability that the object of the taxpayer company's mind at the time the expenditure was  
30 incurred was the goods and services in question were to be used for the purposes of the business."

72. We do accept that the fountain is not mainstream marketing but we take the view that it is effectively a marketing tool not least because it increases the footfall in the area. The brand awareness for FHGP is raised and the plaque near the fountain makes  
35 it explicit that this is a development by FHGP. Whether or not the general public make any connection between the fountain and FHGP matters not. The test is a subjective one.

73. We have absolutely no hesitation in finding that Sir Roger de Haan and Mr Minter at all times considered the construction of the fountain to be an essential part of the  
40 Project. It is abundantly clear from the extensive documentation in this case that the Project has been meticulously planned in immense detail from the outset. If Sir Roger de Haan or FHGP had simply wished to improve the public amenity it would have been tax efficient and easy to have done so using another vehicle. He has been heavily involved in the regeneration of Folkestone for some time including the  
45 regeneration of the Creative Quarter. Had public amenity been his object then it would have been logical to ally the fountain with that. He did not.

74. We find that there is an obvious and clear association between FHGP and the expenditure on the fountain but if we are wrong in that, we also find that no ordinary

businessman would have incurred such expenditure unless it was for the purpose of the business. That is even more starkly the case here where Sir Roger de Haan has a long and very commendable record of charitable donation.

5 75. Both parties also referred to *Rosner*. Justice Latham made it explicit when he said:-

10 “I have been referred to a number of decisions of tribunals in which the question has arisen as to whether or not in any given case it can properly be said that the expenditure has been for the purposes of a business. As is accepted by the commissioners, it is a deceptively simple phrase. But the thread, it is said, which allows one to keep control of a phrase which could otherwise be used to cover a wide variety of circumstances is that there must be a clear nexus between the matter in relation to which the expenditure has been incurred and the business itself. That nexus cannot merely be the fact that the business will benefit from the expenditure ... It seems to me that the nexus, if it is not to be benefit, must be directly referable to the purpose of the business. By the purpose of the business in this context I mean by reference to an analysis of what the business is in fact doing. It is only by identifying what the nature of the business is in that way that one can determine the extent to which any given expenditure can be said to be for the purposes of that business.”

20 76. We find that there is a nexus in this instance. As we indicate at paragraph 67 we accepted the evidence of Mr Clark that the construction of the fountain had helped to drive up property and value and had contributed to the commercial viability of the Project. The overwhelming evidence of the experts was that not only was the construction of the fountain (or something similar of a place-making genre) essential for the Project but that it had also been seen to have worked.

25 77. HMRC place some stress on the fact that the major beneficiary of the fountain was the public who enjoyed its amenity. The economic reality in this case is FHGP have and will benefit from the construction of the fountain.

30 78. We referred the parties to *Revenue and Customs Commissioners v Loyalty Management UK Ltd (“Aimia”)*<sup>1</sup> on the basis that following that decision, both the decision and reasoning of the House of Lords in *CEC v Redrow*<sup>2</sup> (*Redrow*) are still good law subject to the caveat that the approach of their Lordships cannot lead to results that conflicts with economic reality. In *Redrow*, Lord Hope held that:

35 “The matter has to be looked at from the standpoint of the person who is claiming the deduction by way of input tax. Was something being done for him for which, in the course or furtherance of a business carried on by him, he has had to pay a consideration which has attracted VAT? The fact that someone else... also received a service as part of the same transaction does not deprive a person who instructed the service and who has had to pay for the benefit of the deduction.”

40 79. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

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<sup>1</sup> [2013] STC 784

<sup>2</sup> [1999] STC 161

“Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”  
which accompanies and forms part of this decision notice.

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**ANNE SCOTT  
TRIBUNAL JUDGE**

**RELEASE DATE: 2 March 2015**

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**EU Legislation**

- 5
1. Article 17 of the Sixth Directive 77/388/EEC
  2. Article 168 of the Principal VAT Directive 2006/112/EC

**UK Legislation**

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3. Sections 24, 25, 26, 73, 77 and 83 of the Value Added Tax Act 1994
  4. Schedule 8 Group 5 Value Added Tax Act 1994
  5. Regulations 100-111 of the VAT Regulations 1995 (SI 1995/2518)

15 **EU case law**

6. *Belgium v Ghent Terminal NV* Case C-37/95 [1998] STC 260
7. *Abbey National plc v CEC* Case-408/98 [2001] STC 297 (“Abbey”)
- 20 8. *Gabalfrisa SL* Case C-11/98 [2002] STC 535

**UK case law**

9. *Ian Flockton Developments Ltd v CCE* [1987] STC 394 (“Flockton”)
- 25 10. *CEC v Rosner* [1994] STC 228 (“Rosner”)
11. *P & O European Ferries (Dover) Ltd* [1992] VATTR 221 (VTD 7846)
12. *Dial-a-Phone Ltd v CEC* [2004] STC 987 (“Dial”)
- 30 13. *Mayflower Theatre Trust Ltd v RCC* [2007] STC 880
14. *DFS Furniture v RCC* [2010] SFTD 195
- 35 15. *BAA Ltd v HMRC* [2011] UKUT 258 (Upper Tribunal) and [2013] STC 752 (Court of Appeal)

**HMRC Guidance**

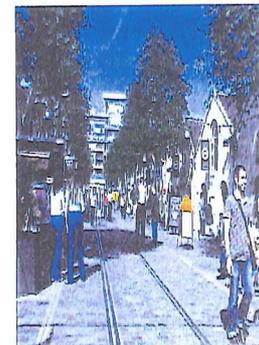
- 40 16. VIT 10200, 10400, 10600, 11500, 12100
17. HMRC Notice 708 Buildings and Constructions
18. HMRC Notice 742 Land and Property

## 4. Re-engage the town centre with the Seafront

FARRELLS



High Line, New York



Bercy Village, Paris

- Provide strong connections between the town centre and the harbour
- Create a new public square (connector) uniting the Harbour and the Town Centre
- Improve accessibility between upper and lower Leas levels

