

A Summary of the Ruling of the European Court of Justice (the “ECJ”) in The Rank Group plc (C-259/10 & C-260/10)

1. The case concerns the principle of fiscal neutrality, which requires that goods and services which are identical or similar must be treated in the same way for VAT purposes.
2. The Rank Group plc (“**Rank**”) had paid VAT to HMRC on the provision of certain types of mechanised cash bingo (or MCB) and slot machines, and it argued that this was in breach of the principle of fiscal neutrality because HMRC did not seek to charge VAT on other types of MCB and slot machines which were comparable, and arguably even identical.
3. The ECJ considers that services are “similar” where they have similar characteristics and meet the same needs from the consumer’s perspective – the test is whether their use is comparable, and services are “similar” where any differences between them do not have a significant influence on the decision of the average consumer to use one over the other.
4. On the specific services considered in the case, the ECJ considers that factors such as minimum and maximum stakes and prizes, the chances of winning, the formats available and the possibility of interaction between player and slot machine **do** have an influence on the decision of the average consumer to choose one game over another, and are thus relevant when considering whether two types of slot machines are “similar” (and should have the same VAT treatment) for these purposes.
5. Where services are identical or similar from the perspective of the consumer, and meet the same needs of the consumer, the principle of fiscal neutrality requires that they are treated in the same way for VAT purposes, and if they are treated differently, the principle is breached even if no actual competition exists between the two services or the difference in treatment has not caused any distortion of competition.
6. Where there has been a breach – i.e. where VAT has been paid on one service where none was payable on another identical or similar service – the taxpayer is entitled to claim repayment of the VAT.
7. However, it cannot do so where the second service was in fact subject to VAT under applicable law and was only treated by HMRC as exempt as a matter of practice.
8. Where two types of machines have been treated differently for VAT purposes, resulting in a breach of the principle, that HMRC responded with due diligence within a reasonable time to rectify the difference is not a defence. It cannot, therefore, be invoked to defeat the taxpayer’s claim for repayment of the overpaid VAT.
9. The amount of VAT at stake in the case was substantial, and the ruling affects other businesses in the gaming and leisure industries in a comparable situation to Rank’s (many of whom have already made claims on a similar basis). Although the case refers specifically to types of MCB and slot machines, the findings of the ECJ on the principle of fiscal neutrality apply to all supplies of goods and services.

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