

Supreme Court Decides that Danish Tax Authority Can Pursue Claim to Recover Funds Obtained by Fraud Before UK Courts

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The United Kingdom's Supreme Court has published its judgement in the case of [Skatteforvaltningen \(the Danish Customs and Tax Administration\) \(Respondent\) v Solo Capital Partners LLP \(in special administration\) and others \(Appellants\) \[2023\] UKSC 40](#) and dismissed the appeals, ruling that the Danish tax authority can pursue its claim to recover funds obtained by fraud before UK courts.

(a) Facts. Non-residents of Denmark holding shares in Danish companies are liable to pay 27% withholding tax on any dividends. A refund of that tax can be claimed from the Danish Customs and Tax Administration, Skatteforvaltningen (SKAT). SKAT alleged that Solo Capital Partners LLP (SCP) held no shares in Danish companies and received no dividends, but nevertheless claimed and received tax refunds of about GBP 1.44 billion under the provisions of various tax treaties. SKAT sought to recover these amounts through the UK court system. The appellants denied the claims by SKAT on the basis that either their trade structures enabled them to make bona fide claims under section 69B(1) of the Withholding Tax Act (*Kildeskatteloven*) or that they had a reasonable belief that the claims were lawful. They argued that they therefore complied with Danish tax law. The Commercial Court ruled that the UK courts did not have jurisdiction (see [United Kingdom Court Dismisses Danish Tax Authorities' Claims on Danish Revenue Law Enforcement \(5 May 2021\)](#)), but this was overruled by the [Court of Appeal](#). In a separate "validity trial", the Commercial Court had previously ruled that a contract to sell shares did not make the purchaser a shareholder for tax purposes (see [High Court Upholds Danish Tax Authorities' Claims on Danish Revenue Law Enforcement \(29 March 2023\)](#)). SCP then appealed to the Supreme Court.

(b) Issue. The appellants claimed that they were protected by "the revenue rule" (a principle of private international law). This is described in *Dicey, Morris & Collins, The Conflict of Law* which states that "English courts have no jurisdiction to entertain an action ... for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign state...".

(c) Decision. The Supreme Court upheld the decision of the Court of Appeal that SKAT's claims did not fall within the scope of the revenue rule. This was because the money sought by SKAT was not unpaid tax or tax at all, but rather money which SKAT alleged had been taken by fraud. The appellants had never been liable to Danish tax.

The Supreme Court also considered whether a claim by SKAT was barred by the "sovereign authority rule", whereby the enforcement of a public law of a foreign state, directly or indirectly, is also inadmissible before the UK Courts. Although Denmark has exercised its sovereign power to create and operate its tax

system, the claims did not involve any act of a sovereign character or right. In seeking to recover money that it alleged had been obtained by fraud, SKAT was taking a course of action that would be available to any private individual in the same situation.

As a result of its decision to dismiss the appeals of SCP and others, SKAT can pursue its claims against the appellants in the Commercial Court.

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