



TAX ON REAL PROPERTY APPEALS PANEL

CASE NO. 0057/2013

THE TAX ON REAL PROPERTY APPEALS TRIBUNAL

MACRO HOLDINGS LIMITED

-v-

THE STATES OF GUERNSEY TREASURY
AND RESOURCES DEPARTMENT

JUDGMENT OF THE TAX ON REAL
PROPERTY APPEALS TRIBUNAL

A. The Tribunal members

Mrs Caroline Latham (Chairman)
Mrs Sheelagh Evans
Mr Martin Johnson

Clerk to the TRP Appeals Panel: Mrs N K Allison

B. The persons representing the parties

Mr P Van de Velde appeared for the Appellant.

Mr M Burton appeared for and also gave evidence for the Respondent.

C. Witnesses

For the Appellant:

Mr M Legg – Retail Manager

For the Respondent

Mr A Riseley – Chief Executive Channel Islands Competition and Regulatory Authority
Mr M Burton – Chief Cadastre Officer
Mr C Wall – Service Delivery and Compliance Officer

Each witness prepared a signed and dated statement and for the purposes of the Hearing these were accepted by both parties “as read”. Each witness gave further evidence at the Hearing under Oath or Affirmation.

D. Dates

The Notice of Appeal was dated 15 March 2013.

The hearing of the appeal took place on 19 July 2013.

This judgment is dated 4 September 2013

E. The subject Property

The subject property is 45 High Street, St Peter Port. Cadastre Reference A200130000.

F. The Law

The Law referred to in this decision:

The Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 (the “2007 Ordinance”).

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (the "Regulation Law").

G. Summary of grounds of appeal

The Appellant in exercising an appeal under Section 31 of the 2007 Ordinance has alleged, pursuant to Section 31(2) of the 2007 Ordinance that the decision of the Respondent made under Section 30 of the 2007 Ordinance is wrong.

In summary, the issue between the Appellant and the Respondent was that the category B5.1 "Utilities providers" assigned to the property was wrong. The Appellant's view is that category B4.4 'Retail' is more appropriate.

H. Documents

The documents referred to and taken into consideration by The Tribunal in reaching its decision are:

- A1 - Appellant Bundle 1 (tabs 1 -10 and witness statements)
- R1 - Respondent Bundle 1 (tabs A – F and Appendices 1 and 2)
- R2 - Respondents Bundle 2 (witness statements, tabs A - C)
- R3 - Respondent Bundle 3 (comparable assessments, tabs A – C)

I. The position and arguments of the Appellant

Although all arguments, both oral and by way of documents have been considered by the Tribunal, whether they are specifically mentioned in this judgement or not, the Appellants relied on the following:-

1. The subject property is owned by Macro Holdings Limited and is occupied under a Lease by Guernsey Airtel Limited, a company registered under the Regulation Law.
2. The property comprises 5 floors and is used for the sale of mobile and telecommunications devices, attracting new customers for telecommunications contracts and sale of subscriber identity module (SIM) cards on the ground floor; storage and administrative tasks on the upper floors and a training room on the basement level. The administrative tasks include forwarding (but not accepting) contracts for customers to the company's administrative offices in Jersey. On occasion, the CEO of the business works at a desk on an upper floor. None of these activities are licensed under the Regulation Law.
3. The basis of the assessment for TRP purposes should reflect the actual use of the property. In this case, the use is purely retail and not for the provision of licensable services that are regulated by the Channel Islands Competition and Regulatory Authority (CICRA).

4. Under planning legislation the use class of the subject property is retail.
5. Activities which are subject to regulation are carried out in the company's premises in St Martins.
6. The owner and occupier of the building are of the opinion that there has been no change to the plan area or change to the property reference and have no obligation to notify the Department in accordance with section 15 of the 2007 Ordinance.

J. The position and arguments of the Respondent

Although all arguments put forward have been considered by the Tribunal, whether they are mentioned specifically in this judgment or not, the Appellant's submissions, arguments made the following key points:-

1. The subject property is owned by Macro Holdings Limited and is leased to Guernsey Airtel Limited, a company licensed and regulated to provide two licensable telecommunications services in accordance with the Regulation Law. The licences entitle Guernsey Airtel Limited a) to establish, operate and maintain a Licensed Mobile Telecommunications Network, and to provide Licensed Mobile Telecommunications Services, within, to and from the Bailiwick of Guernsey and b) establish, operate and maintain a Licensed Telecommunications Network.
2. 45 High Street, St Peter Port is the registered office of the company.
3. On 10th December 2012 the Department issued notice of a revised assessment for the subject property together with an accompanying letter explaining the reasons for the change of assessment (tab C of the main bundle refers). The notice of revised assessment was to change the categorisation of the property from category B4.4 Retail (Goods and Services) to B5.1 Utility providers. The definition of "utilities provider" is set out in Part III of the 2007 Ordinance.
4. The Department was satisfied that the usage of the property is that of "offices, display, sales and ancillary accommodation of regulated Utilities provider business" and that customers may "avail themselves of licensable telecommunications services from the above named property" (being 45 High Street) – tab G of the R bundle refers in a letter dated 18 February 2013.
5. By virtue of the legal status of the occupier of the property as a business licensed and regulated by CICRA, the Department relies on Schedule 1, parts I and III of the 2007 Ordinance and that this determines that all property occupied by an entity that is regulated by CICRA attracts the property reference B5.1.
6. The Appellant's reliance on the conflict between the categorisation of the subject property under the 2007 Ordinance and its classification under the Island Development (Use Classes) Ordinance, 1991 is incorrect and the Tribunal should have regard to the appeal of *Alliance Cash and Carry Ltd*.

K. Findings of fact by the Tribunal

Having considered all submissions, oral evidence, documentation and an inspection of the subject property, the Tribunal found as follows:-

1. The subject property is owned by Macro Holdings Limited and occupied under an occupational Lease by Airtel Guernsey Limited.
2. Airtel Guernsey Limited is regulated by virtue of the Regulation Law.
3. The property is a 5 storey building with a traditional shop front and is situated in the centre of the retail area of St Peter Port.
4. The accommodation and its use is as follows:

Basement – used for staff training

Ground floor – a retail unit selling telecommunications equipment, SIM cards, providing paper work for new customers to complete for new contracts

First floor – office and administration (see also paragraph 5 below)

Second floor – empty save for 1 desk and chair used occasionally by a senior staff member when in Guernsey

Third and fourth floors – empty

5. From its inspection, the Tribunal found no equipment used in connection with “the emission, transmission, switching, conveyance or reception of messages through the agency of electric, magnetic electro-magnetic, electro-chemical, electro- mechanical or electro-optical energy or by optic-electronic means” as defined by section 31(1) the Telecommunications Law.

L. Conclusions

1. The Appellant made an appeal under Section 31 of the 2007 Ordinance and has alleged that, pursuant to Section 31 (2) of the Ordinance that the decision of the Respondent made under Section 30 of the 2007 Ordinance is wrong.
2. The Tribunal has to consider whether the subject property is correctly assessed as category B5.1 “Utility providers” in accordance with Part I of the 2007 Ordinance. In reaching its conclusions it reviewed all the oral evidence, documents and arguments made by each party.
3. First it considered whether the legal status of the occupier of the property should determine the categorisation under Schedule 1, Part I of the 2007 Ordinance. The evidence of the Respondent indicated that, in reaching its decision, the property has been categorised having regard to the legal status of the occupier (as a regulated business under the Regulation Law) rather than the actual use of the properties. Under section 3 of the 2007 Ordinance reference is made to “Property references and rates of tax”, which are further described at Schedule I Part I of the 2007 Ordinance. However, the 2007 Ordinance is silent on how these property references are to be applied. The Respondent argued both orally and in a letter sent to the owner of the property on 10th

December 2012 that the application of the categorisation B5.1 is determined by the legal status of the occupier (tab D, page 5, paragraph 2 refers).

4. The evidence regarding the assessment of other properties was carefully considered (Respondent Bundle 3 refers). In particular it considered the assessment of Guernsey Electricity, North Side, Vale (tab D, Bundle 3 refers). The retail sales and retail stores elements of that property are categorised as B4.4 Retail, reflecting the demarcation between regulated and non-regulated activities carried on at the property. The assessment reflects the actual use of the property.
5. The Tribunal therefore prefers to rely on the actual use of the property rather than by the Respondent's assertion that the categorisation is determined solely by the legal status of the occupier.
6. In determining the actual use of the subject property, it paid particular attention to the evidence given by Mr A Riseley, the Chief Executive of the Guernsey Competition and Regulatory Authority (GCRA) who, very helpfully (and whose evidence was crucial in assisting the Tribunal), described the definition and meaning of a "telecommunications network" (Document bundle R2, tab A, paragraphs 6 – 9 refers). In accordance with section 31(1) of the Regulation Law it is described as a network to "establish, operate and maintain a Licensed Mobile Telecommunications Network, and to provide Licensed Mobile Telecommunications Services, within, to and from the Bailiwick of Guernsey". The licensable activities of a telecoms provider were summarised by him as a) to establish and operate a telecoms network (whether a mobile network using radiofrequency spectrum, or a fixed network using cables and ducts) and b) to transmit and convey messages (i.e. provide telecoms services) using a telecom network.
7. Having established the definition of licensable activities under the Regulation Law and that the actual use of the property should determine its categorisation, the Tribunal then had to examine in detail whether any of the activities undertaken are licensable under the Regulation Law. The test is therefore whether any activity within the property is governed by the Regulation Law. If any activity falls within this category then category B5.1 of the 2007 Ordinance will be the correct categorisation. Each activity in turn had to be considered in accordance with Regulation Law.
8. The Tribunal learned from Mr Riseley that the sale of telecommunications equipment, mobile devices, SIM cards, computer equipment, cables and other items sold and or stored for future sale is not limited to a company governed by the Regulation Law. Indeed such devices and other equipment found on the premises are available in many other retail properties which are not categorised as B5.1. Several examples were given including a number of well known food outlets and newsagents where SIM cards and mobile devices could be purchased by members of the public. The Tribunal also learned from the Respondent's evidence that in the case of SIM cards, the act of selling them is not licensable but rather it becomes so at the point at which the SIM card is activated by the service provider. The Tribunal is satisfied that the activation of Airtel Guernsey Limited's SIM card does not take place at the subject property.

9. There was no evidence that staff sales training (undertaken in the basement) is a licensable activity.
10. The Tribunal gave careful consideration to the activity undertaken in relation to the sale of telecommunications contracts, customer queries regarding telecommunications equipment, internet services and account billing. Evidence was given by Mr Riseley regarding the Regulatory Authorities' opinion regarding monthly contract "bundles" and "pay as you go" contracts. In the case of the former, the activity at the subject property was for sales of contracts to customers which included passing to the customer/s appropriate contract application forms for completion. Once the applications were completed they were handed in at the premises and then passed electronically to the company's offices in another jurisdiction. This work was undertaken by staff on the first floor of the premises using various computer terminals. The applications were processed (and accepted or rejected as the case may be) elsewhere (usually in India). The actual activation of the contract for the licensable service takes place in Jersey via the company's premises at Les Caches, St Martins, Guernsey, where Airtel Guernsey operate in the capacity of a licensed company. The Tribunal accepts on the evidence given by the Respondent, that the activity carried on in this respect at the subject property was for the sales and onward transmission of contract applications and that no contracts were accepted, rejected or activated from the premises. In respect of the test referred to at paragraph L.5 above, the Tribunal find that it is not satisfied.
11. In the case of bill payments, the evidence was that the act of producing the invoice was instigated in offices in Jersey. Whilst the Tribunal accepts this as a licensable activity it found no evidence that it was initiated at the subject property. The Tribunal concluded that this activity, together with the various service enquiries received at the subject property, were not licensable activities.
12. All other activities undertaken in the property were found to be administrative including the presence of a normal computer server similar in nature to any other business. The Tribunal was disappointed that the Respondent, who had made reference to this equipment in its evidence, and claimed not to know what it was, had not made enough enquiries to ascertain that it was a computer server used in connection with personal computers installed on the premises. Such equipment is commonplace in most office environments.
13. The Tribunal also considered the Respondent's assertion that the undisputed fact that the subject property was the Registered Office of the occupier was relevant to its categorisation. The Tribunal found this argument to be irrelevant for the purposes reaching any conclusion as to the actual use of the property as defined in the 2007 Ordinance because many thousands of companies with differing legal status are registered at a variety of different addresses throughout the Bailiwick. There is no evidence that the categorisation of property should follow the legal status of any company registered at a property.

14. Having taken into account the evidence, the Tribunal finds that no activity of any type that is subject to the Regulation Law is conducted or carried on at the subject property. For this reason it concludes that the actual use of the property is not "Utility provider" in accordance with the 2007 Ordinance. The Tribunal concludes that for this reason the correct category for the subject property in accordance with Schedule I, Part I of the 2007 Ordinance is B4.4 Retail.

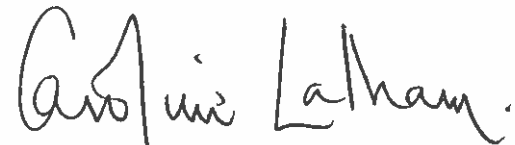
15. The Tribunal also concludes that any assertion by the Respondent that the Appellant is in breach of Section 15 (1) (b) (ii) of the 2007 Ordinance by virtue of its failure to notify the Department of any change of property reference is ill founded and incorrect in accordance with the 2007 Ordinance for the reasons described above.

M. Decision

The Appellant claimed that category B5.1 for the subject property was wrong within the meaning of the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007. The Tribunal considered all the written and oral evidence presented by both parties together with its own observations as a result of an inspection of the subject property. Having due regard to all the facts the Tribunal accepts the appeal and concludes that the correct categorisation is B4.4 Retail.

N. Costs

Each party to pay their own costs



Caroline Latham (Chairman)

Sheelagh Evans

Martin Johnson

4 September 2013