



Law Officers' Department

Press Statement – for immediate release

Jersey's Attorney General wins UK Supreme Court argument on EU free movement of capital

In a landmark constitutional decision for Jersey, the UK Supreme Court has accepted the arguments of the Attorney General for Jersey as to whether or not the European Union right of free movement of capital applies to movements between the UK and Jersey.

The case was heard by the Supreme Court because HMRC appealed the decision of the English Court of Appeal, which also agreed with the Attorney General.

This case has particular significance as to how the term "third country" is to be understood and applied and the judgment prevents unnecessary uncertainty for Jersey in respect of EU rules governing capital movements.

Free movement of capital is the only EU freedom which expressly benefits third countries as well as member states. The Attorney General argued that Jersey's status was that of a "third country". But HMRC argued that Jersey was not a third country and that the Island's constitutional relationship with the United Kingdom meant that the relationship was a purely "internal" one for the purpose of capital movement and that the dispute should be sent to the European Court of Justice to decide because it had never been decided by the European Court before. If HMRC had succeeded this could have meant that Jersey might be denied the protections with respect to capital movements guaranteed to third countries. The judgment means, for example, that the UK government could not introduce restrictions affecting movements of capital to and from Jersey.

The outcome of the case recognises that Jersey has the same fundamental rights under EU Law to free movement of capital enjoyed by many other international finance centres. The full judgment is awaited. But the decision, on Tuesday 2 April 2019, which is final and cannot be appealed further, reinforces the Island's status as a third country recognized as such by EU bodies and EU Law.

Jersey's Attorney General, Robert MacRae QC, said: "This issue had not been considered by the UK Courts before and both the Court of Appeal and the Supreme Court gave us permission to intervene and be heard because of the importance of the matter to the Island. The Supreme Court has now given the last word on this issue. It is very helpful that Jersey's status as a third country for the purpose of free movement of capital has been put beyond doubt."

5 April 2019

Ends

Notes for Editors

Free movement of capital is a universal EU freedom and forms the basis for the modern market economy, particularly as regards financial services. It prevents capital restrictions which may otherwise apply on, for example, international currency or cash movements, exchange controls, as well as a variety of specific regulatory or administrative burdens applying only to overseas assets. The concept of capital liberalisation is extremely broad and applies to almost every transaction of substance, including movements of money, investments in shares or securities, gifts, inheritance and the establishment of trusts.

Statement distributed by the Law Officers' Department, Jersey

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