

Fatac Ltd (in liq) v CIR 23/9/02, CA227/01

Unsuccessful appeal by FL against tax liability - FL was found to be liable for output GST on the sale of land to a third party ("MW") - FL claimed the occupation right granted to another party ("A") was a tenancy rather than a licence therefore it was a going concern and the transaction was zero-rated for GST purposes - FL argued whatever the conventional classification of the agreement the parties intended it to be a going concern - CIR claimed the occupation right granted to A was a licence and therefore FL was liable for GST.

Held, case revolves around distinction between a lease and a licence - supply of the land could only be zero-rated if there was agreement that supply was a going concern for purposes of Goods and Services Tax Act 1985 - whether an interest in land is a lease or licence determines whether a tenant has right to exclusive possession of that land or as licensee only has the right to do something on that land - A's right of occupation was far from exclusive as MW had numerous other rights over the land as long as they did not disturb A's mining of basalt - there is no clearly defined area over which A had the exclusive right in the agreement - if it was the intention of the parties that the taxable activity be transferred as a going concern it should have been expressly stated in the agreement - arrangement with A was a licence in the strict sense therefore FL is liable for output GST - appeal dismissed.