

April 2008

MARKS & SPENCER VAT WIN

M&S have won a landmark victory in the European Court of Justice. The case concerned whether or not HMRC were correct to limit the amount of VAT they repaid to the company after their chocolate teacakes were reclassified as a cake rather than a chocolate biscuit. The issue of cakes and chocolate biscuits is an important one as it means they are zero rated rather than standard rated. The case dates back many years.

HMRC only repaid M&S 10% of the output tax it had overpaid on sales of chocolate teacakes on the grounds that the other 90% had been suffered by the customer and so M&S would be 'unduly enriched' if it got it all back. The European Court of Justice has ruled that HMRC cannot restrict the repayment if they would be treating M&S unfairly by repaying others 100% of the overpayment. The House of Lords is now expected to confirm that M&S have been treated unfairly.

Internet link: [BBC website](#)