



Press Summary

12 February 2025

Royal Bank of Canada (Respondent) v Commissioners for His Majesty's Revenue and Customs (Appellant)

[2025] UKSC 2

On appeal from [2023] EWCA Civ 695

Justices: Lord Lloyd-Jones, Lord Briggs, Lord Hamblen, Lord Leggatt, Lady Rose

Background to the Appeal

The issue in this appeal is in what circumstances income earned from the sale of oil found in the UK Continental Shelf can be taxed in the United Kingdom.

Article 6 of the double taxation treaty entered into by Canada and the UK in September 1978 (“**UK/Canada Convention**”) provides that income from immovable property may be taxed in the Contracting State in which such property is situated. Article 6(2) provides an expanded definition of what counts as “immovable property” for this purpose. That definition includes rights to variable payments “as consideration for the working of, or the right to work, ... natural resources”. That right to tax conferred by the UK/Canada Convention takes precedence over any other allocation of taxing rights between the Contracting States.

In relation to natural resources, there are special rules for profits relating to exploration or exploitation activities or rights. Section 279 of the Corporation Tax Act 2010 treats profits as part of a separate (“ring fenced”) trade carried on through a permanent establishment in the UK. Section 1313 of the Corporation Tax Act 2009 prevents the profits from being reduced by, for example, losses from other activities carried on by the company.

In the early 1980s, Sulpetro (UK), a UK subsidiary of a Canadian tax-resident company Sulpetro Limited (“**Sulpetro**”), was granted a licence by the UK Government to explore a particular section of the North Sea Continental Shelf known as the Buchan Field. In 1986, BP Petroleum Development Ltd (“**BP**”) acquired from Sulpetro both the share capital in Sulpetro (UK) and the rights that Sulpetro had under its agreement with Sulpetro (UK) to any oil acquired from the Buchan Field. In return, BP promised to make payments to Sulpetro calculated by reference to the volume of oil BP acquired once the price at which that oil could

be sold by BP rose above a certain level (“**the Payments**”). Royal Bank of Canada (“**RBC**”) subsequently took over from Sulpetro the rights to receive the Payments in 1987.

In 2014, the Commissioners for His Majesty’s Revenue and Customs (“**HMRC**”) sent notices of assessment to RBC for the accounting periods ending 31 October 2008, 2009, and 2010, alleging that the Payments are subject to UK corporation tax as profits of a “ring-fenced” oil trade regime under Part 8 of the Corporation Tax Act 2010.

The question at the heart of this appeal is what “the working of, or the right to work” the Buchan Field means and whether it encompasses the rights that BP was paying for when making the Payments to the Respondent. If such rights were acquired, are the Payments to be regarded “as consideration for” the right to work the Buchan Field within the meaning of Article 6(2)? Finally, if the Payments are covered by Article 6(2) so that the UK/Canada Convention conferred taxing rights on the UK in respect of the Payments, has the UK, in fact, exercised those rights and imposed a charge to tax, in domestic legislation, under the proper interpretation of section 1313 of the Corporation Tax Act 2009?

Both the First-tier Tribunal and Upper Tribunal held that the Payments were within Article 6 of the UK/Canada Convention and were also caught by section 1313. They held, therefore, that RBC had to pay tax on the Payments to HMRC. The Court of Appeal allowed RBC’s appeal and held that the rights that BP acquired and for which it was paying RBC did not amount to a “right to work” the Buchan Field. They further held that the Payments were not made “as consideration for” any right to work. Although it did not, therefore, have to consider whether the UK had exercised those rights and imposed a charge to tax in domestic legislation, it nevertheless cast doubt on the reasoning of the First-tier Tribunal and the Upper Tribunal as regards the interpretation of the domestic provision. HMRC now appeals to the Supreme Court

Judgment

The Supreme Court, by a majority, dismisses this appeal. Lady Rose gives the leading judgment, with which Lord Lloyd-Jones, Lord Briggs, Lord Hamblen, and Lord Leggatt agree. Lord Briggs gives a dissenting judgment.

Reasons for the Judgment

First, on the issue of whether the rights that BP paid for fall under the meaning of “right to work” under Article 6(2), the Court of Appeal was correct to say that they did not [75]. It was Sulpetro (UK) that held the licence to work the Buchan Field and not Sulpetro, and it had all the rights and responsibilities that arose under that licence [81]. There is a legal difference between someone having a right to work natural resources and someone having a right to require another person to work those natural resources. Sulpetro has the latter but not the former [82]. Nor can the separate legal personality of Sulpetro (UK) from Sulpetro be ignored [86-87].

It is important to bear in mind that the UK/Canada Convention does not determine whether a particular stream of revenue should be taxed or tax free [92]. Instead, it identifies where the boundary lies between, on the one hand, Canada’s power to tax the profits attributable to the Canadian business of a Canadian-resident company and, on the other hand, HMRC’s power to tax profits which derive from the exploitation of the UK’s natural resources. There is nothing within the UK/Canada Convention which indicates that one must identify the right to work and attribute that right to the entity which invests its funds and sells the oil, even if that is not the entity which is licensed by the Government [94-96].

Second, as the rights that BP paid for did not amount to the “right to work”, there is strictly no need to consider whether RBC’s right to the Payments amounted to a right to “consideration for” that right to work [99]. Nevertheless, the application of Article 6(2) is fact specific. It is not appropriate to attempt to identify the precise boundary between those arrangements which will in future be treated as falling within Article 6(2) and those which will not, though it is important to interpret the UK/Canada Convention in a way which provides a coherent and clear structure for the allocation of taxing rights [100].

Essential to the idea of payments being “consideration for” the right to work is a requirement that the recipient of the payments must be the person who can confer on the payer the right to work the Buchan Field [105]. Since neither Sulpetro nor RBC ever held an interest in the Buchan Field, and neither was ever in a position to confer a right to work the minerals in the North Sea, the consideration they received cannot have been in return for the right to work their land [106]. Although this will mean that fine distinctions will arise, with similar situations falling on either side of the line, there must be a dividing line [100, 106]. Even if the bundle of rights that Sulpetro acquired and then gave to BP had amounted to the right to work, those rights would still have been too remote to fall within the definition of immovable property in Article 6(1) of the UK/Canada Convention [108, 113].

Third, although it is not directly necessary to decide whether the income, if it fell within Article 6(2), would be taxable under section 1313 of the Corporation Tax Act 2009, the Court would hold that the income did fall within section 1313 [114, 122]. The Payments gave rise to profits arising to a non-UK resident company (Sulpetro) from rights to the benefit of assets (the oil) produced by an activity carried on in connection with the exploitation of natural resources in the UK sector of the continental shelf. Because the Payments are such profits, section 1313(2) provides that they are treated for corporation tax purposes as profits of trade by Sulpetro in the UK through a permanent establishment in the UK [117]. There are many contracts under which a payment is calculated by tracking the price of a particular commodity, such as oil, which will not fall within section 1313(2) [120-121]. However, the Payments here are much more closely related to the extraction of the oil than simply tracking its price.

In his dissenting judgment, Lord Briggs agrees with the majority’s conclusion that the Payments would, in theory, be taxable under section 1313 of the Corporation Tax Act 2009. In disagreement with the majority, however, he holds that they should be, as they do fall within Article 6(2) of the UK/Canada Convention [124]. In his view, the Convention may be loosely treated as analogous to a taxing statute, at least in relation to the effect of Article 6, which brings within a prior UK right to tax the income from immovable property situated in the UK, and then provides an extended definition of what immovable property is [125]. Article 6(2)’s definition of immovable property is based on a perception that the property in question has so close a connection with the use or exploitation of land within the Contracting State that it is recognised as fair that the State in which the property is situated should have the prior right to tax income and profits arising from it [129]. There is nothing to suggest that someone must be the original owner of the relevant rights to work the resources, or the owner of the ground on or under which they are situated, and it would be extraordinary if it could be so easily removed as on the facts in this case [132].

Although tax avoidance played no part in the present case, the realistic view of the transaction (characterised either as between Sulpetro and Sulpetro (UK), or between BP and Sulpetro) is that Sulpetro transferred to BP everything which Sulpetro had previously enjoyed in relation to the working of the Buchan Field, including all the risks and rewards, paying all the costs and expenses, providing all the expertise and so on, of the extraction [127, 136-138]. In practice, this meant that Sulpetro (and later BP) was working the Buchan Field as of right, and not simply de facto [138, 142]. The Payments were, in turn, clearly consideration for what BP received, as quid pro quo for the right to work [143].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)