Trinity Term
[2025] UKSC 24
On appeal from: [2024] EWCA Civ 1

JUDGMENT

Commissioners for His Majesty's Revenue and Customs (Respondent) *v* Dolphin Drilling Ltd (Appellant)

before

Lord Hodge, Deputy President
Lord Burrows
Lady Rose
Lord Richards
Lady Simler

JUDGMENT GIVEN ON
24 June 2025

Heard on 13 February 2025

Appellant
Nicola Shaw KC
Harry Winter
(Instructed by Ernst & Young LLP (London))

Respondent
David Ewart KC
Quinlan Windle
(Instructed by HMRC Solicitor's Office & Legal Services (Stratford))

LORD HODGE (with whom Lord Burrows, Lady Rose, Lord Richards and Lady Simler agree):

1. This appeal concerns the interpretation of a provision of the Corporation Tax Act 2010 ("CTA 2010"). With effect from 1 April 2014 Part 8ZA of the CTA 2010 imposed a hire cap on contractors operating within the UK territorial sea or Continental Shelf. As explained below, the hire cap restricted the deduction of payments under leases between connected parties in respect of any "relevant asset" in computing the profits of the paying contractor from its "oil contractor activities". A relevant asset includes a structure which can be moved from place to place and can be used to "provide accommodation for individuals who work on or from another structure used in the relevant offshore area ... ('offshore workers')". Excepted from the definition of a "relevant asset" is an asset "if it is reasonable to suppose that its use to provide accommodation for offshore workers is unlikely to be more than incidental to another use, or other uses, to which the asset is likely to be put." The central question on this appeal is what is meant by the words "unlikely to be more than incidental to another use, or other uses" in the context of the statutory provision.

2. In his careful judgment in the Court of Appeal, Nugee LJ set out the background material to the Finance Act 2014, which introduced the relevant provision into the CTA 2010, and expressed the view that the material did not really assist in determining the appeal. I agree. I therefore set out that background briefly. The United Kingdom Government was concerned that the oil and gas industry was using bareboat charters between connected parties to move significant taxable profit outside the UK tax net. In other words, the mischief was that operators were entering into contracts to lease large offshore oil and gas assets with associated companies registered outside the UK and outside the scope of UK corporation tax and were making leasing payments to those companies. Those leasing payments were deducted from the operators' profits which were liable to UK corporation tax. The aim of the legislation as enacted was to introduce a cap ("the hire cap") on the deduction of payments under leases of drilling rigs and accommodation vessels between such connected parties.

(1) The relevant statutory provisions

3. Part 8ZA of the CTA 2010 (sections 356K-356NJ) sets out in four chapters the corporation tax treatment of "oil contractor activities". The relevant provisions for the purpose of this appeal are section 356N, which provides for the hire cap, and section 356LA, which defines "relevant asset".

4. Section 356N, which is headed "Restriction on hire etc of relevant assets to be brought into account", provides:

"(1) This section applies if the contractor makes, or is to make, one or more payments under a lease of—

(a) a relevant asset, or

(b) part of a relevant asset.

(2) The total amount that may be brought into account in respect of the payments for the purposes of calculating the contractor's ring fence profits in an accounting period is limited to the hire cap."

5. Section 356LA, which is headed "Relevant Asset" provides:

"(1) In this Part 'relevant asset' means an asset within subsection (2) in respect of which conditions A and B are met.

(2) An asset is within this subsection if it is a structure that—

(a) can be moved from place to place (whether or not under its own power) without major dismantling or modification, and

(b) can be used to—

(i) drill for the purposes of searching for, or extracting, oil, or

(ii) provide accommodation for individuals who work on or from another structure used in a relevant offshore area for, or in connection with, exploration or exploitation activities ('offshore workers').

(3) But an asset is not within subsection (2)(b)(ii) *if it is reasonable to suppose that its use to provide accommodation for offshore workers is unlikely to be more than incidental to*

another use, or other uses, to which the asset is likely to be put. (Emphasis added)

(4) In subsection (2)—

'oil' means any substance capable of being won under the authority of a licence granted under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964;

'structure' includes a ship or other vessel.

(5) Condition A is that the asset, or any part of the asset, is leased (whether by the contractor or not) from an associated person other than the contractor.

(6) Condition B is that the asset is of the requisite value.

(7) The asset is of the 'requisite value' if its market value is £2,000,000 or more."

6. There is no dispute that Conditions A and B are met if the asset with which this appeal is concerned falls within subsection (2). The question on this appeal, as I shall explain, is whether subsection (3), which I have emphasised above, applies to exclude the application of subsection (2). On the facts of this case, if it does not fall within subsection (3) then it is a relevant asset and so is subject to the hire cap in section 356N(2). If it does fall within subsection (3) then it falls outside section 356LA(2) and so is not subject to the hire cap.

(2) The factual background

7. Total E&P UK Ltd ("Total") carry on drilling activities at the Dunbar oil platform ("Dunbar") in the North Sea on the UK Continental Shelf. The Dunbar is a "minimum facility drilling platform" which has a drilling derrick but lacks facilities which are essential for active drilling operations. To enable the Dunbar to perform such operations it needs the support of a tender support vessel ("TSV"), which is designed to provide tender assisted drilling ("TAD") services.

8. To operate a minimum facility drilling platform the TSV is moored alongside the platform and connected by a gangway and an assortment of hoses. When connected the TSV and the platform effectively form an integrated unit during the drilling campaign. TSVs are distinct from accommodation vessels, the sole purpose of which is to be used as a mobile offshore hotel. Such accommodation vessels are commonly called "flotels".

9. The Dunbar in 2010 had not drilled for several years. Total intended to recommence drilling for a three-year period in 2012. To that end it needed a TSV to be connected to the Dunbar. This was achieved by the contractual arrangements which I describe below.

10. Total invited Dolphin Drilling Ltd ("Dolphin") to tender for the provision of a TSV which supplied mud storage and pumping, cement storage and pumping, utilities and accommodation. In August 2011 Dolphin submitted a tender in which it proposed to use a rig called "the Borgsten Dolphin" ("the Borgsten"), which it obtained from an associated company registered in Singapore, Borgsten Dolphin Pte Ltd ("BDPL").

11. The Borgsten was built in 1975 as a semi-submersible drilling rig and was at the end of its useful life in that role but could be converted into a TSV. It had two decks, each the size of a football pitch. A significant majority of the space on board was used for the provision of TAD services but at the time of the invitation to tender it also had the capacity to accommodate 102 persons on board. In the negotiations with Total, it was envisaged that the Borgsten while operating as a TSV would have its own crew who were either the employees of Dolphin or of its subcontractors. Those employees would number around 55 and be accommodated on the Borgsten. It was expected that there would be some 47 surplus berths on board.

12. On 10 November 2011 Total awarded Dolphin the contract to supply TAD services to the Dunbar, and a contract for the provision of TSV drilling services was signed on 1 February 2012. The contract stated that the Borgsten was to provide accommodation for 102 persons, with Total requiring accommodation for 40 Total personnel. While this contract was being put in place, Total, which wished to commence drilling promptly, requested Dolphin to study the consequences in terms of cost and scheduling of increasing the accommodation capacity of the Borgsten from 102 to 120 persons. On 1 May 2012 Total and Dolphin agreed to a change order, which increased the accommodation to be provided on the Borgsten to 120 berths, and instructed the needed modifications to the Borgsten at a cost in total of US$6,700,800, for which Total paid.

13. Dolphin leased the Borgsten from BDPL on a bareboat charter, paying a charter fee of initially over US$100,000 per day. The Borgsten was moved into position alongside the Dunbar in February 2013. The contract between Total and Dolphin stipulated for services to be provided in a pre-drilling phase which was originally expected to last 120

days, followed by a fully operational period when the Dunbar's drilling operations would be under way. The pre-drilling phase was extended until April 2015 because the upgrade works on the Dunbar took longer to complete than had been expected.

14. TAD services involve the provision of a stable base from which to deliver a range of drilling support services. Those services include: (i) the uninterrupted supply of drilling mud, water, compressed air and cement to the platform, (ii) the provision of facilities, including warehousing, storage of materials, workshops with welding and machine facilities, deck storage, laboratory space, and office and conferencing facilities for the TSV crew as well as the operator's personnel working on board the TSV, and blowout protection, and (iii) functions such as a heliport and living space, including leisure, hospital, galley, mess and sleeping accommodation.

15. During the pre-drilling phase the Borgsten was connected to the Dunbar and was operational. It had a full crew. It established an efficient interface with the Dunbar and was kept in a constant state of readiness. Its day-to-day activities were largely the same in both the pre-drilling and the drilling phases. The Borgsten (i) ran the mud systems in a closed loop, (ii) supplied water and compressed air, and (iii) provided warehousing, heliport, welding and machine shop, deck storage, cranes, wharf, office and accommodation facilities.

16. The personnel working on the Dunbar or the Borgsten were accommodated on one of those vessels. They were brought to the Borgsten by helicopter on most weekdays and typically spent a period of two weeks on board. The Borgsten's crew ("Dolphin personnel") were either Dolphin's employees or sub-contractors. The number of Dolphin personnel working on the Borgsten in the pre-drilling period was usually around 55. Once drilling commenced, the number was in the range of 45 to 59 with an average of 52.

17. The personnel provided by Total, either its employees or sub-contractors, ("Total personnel") were accommodated either on the Dunbar or on the Borgsten. Most of the Total personnel worked on the Dunbar and some worked on both the Dunbar and the Borgsten. Those Total personnel who were accommodated on the Borgsten were "offshore workers" for the purposes of section 356LA(2) of the CTA 2010 because they were accommodated on the Borgsten but worked on or from "another structure", that is the Dunbar. A small number of the Total personnel worked only on the Borgsten; they were not "offshore workers" for the purposes of that subsection.

18. The maximum number of personnel permitted on the Dunbar at any one time ranged from 85 to 89, as this was the capacity of the lifeboats on the Dunbar. All the personnel on the Dunbar were Total personnel. In the pre-drilling phase, there was an average of around 80 Total personnel working on the Dunbar. In the drilling phase the numbers were in the range of 60 to 70.

19. The Dunbar had only 60 berths and could not accommodate all the Total personnel working on it. In 2014, during the pre-drilling phase, the number of Total personnel who slept on the Borgsten was on average 58. Once drilling commenced, the average remained largely the same (59) although the range was wider, from 26 to 72. During the pre-drilling phase, some 53-54 of the average 58 Total personnel sleeping on the Borgsten worked solely or partly on the Dunbar while four or five worked only on or from the Borgsten. In the drilling phase, about 9 or 10 of the Total personnel worked only on the Borgsten and 49 or 50 of the Total personnel sleeping on the Borgsten worked on the Dunbar.

(3) Dolphin's tax returns and HMRC's closure notices

20. This appeal is concerned with Dolphin's tax returns for the accounting periods ending 31 December 2014 and 31 December 2015. In preparing those tax returns Dolphin assumed in each period that it was entitled to take into account in the calculation of its profits the entirety of the fees which it paid to BDPL. HMRC took the view that the hire cap applied and on 15 January 2018 issued a closure notice amending the tax return for the period to 31 December 2014 to show that further corporation tax was payable. On review by HMRC an error in the initial calculation was identified and the additional tax payable was stated to be £4,039,309.26. HMRC issued a similar closure notice for the accounting period ended on 31 December 2015 in which it stated that the additional corporation tax for that period was £2,691,385.73.

(4) The legal proceedings

21. Dolphin appealed to the First-tier Tribunal ("FTT"). The focus of the appeal was on the meaning of the words in section 356LA(3) and, in particular, whether it was reasonable to suppose that the use of the Borgsten to provide accommodation for those working on the Dunbar was unlikely to have been more than incidental to other uses of the Borgsten. The FTT (Judge Jeanette Zaman and Mr Duncan McBride) allowed the appeal in a decision dated 16 November 2020 [2021] UKFTT 145 (TC). They concluded that it was reasonable to suppose that the use of the Borgsten to provide accommodation for those working on the Dunbar was unlikely to have been more than incidental to other uses of the Borgsten.

22. HMRC appealed to the Upper Tribunal ("UT"). In a decision dated 4 August 2022 [2022] UKUT 212 (TCC) the UT (Falk J and Judge Thomas Scott) dismissed the appeal, concluding that the FTT had not erred in law.

23. HMRC then appealed to the Court of Appeal which in a judgment dated 11 January 2024 [2024] EWCA Civ 1; [2024] Ch 255 allowed the appeal, holding that the FTT had erred in law. The judgment was given by Nugee LJ, with whom Newey LJ and Peter Jackson LJ agreed. Focusing on the question of what is meant by the word "incidental"

and the words "more than incidental" in the context of section 356LA(3), the Court of Appeal did not accept the FTT's view (at para 170 of its decision) that "[s]omething is incidental to another matter if it is subordinate, or secondary, to it". Nor did it accept the FTT's statement (at para 175 of its decision) that

> "incidental does not need to be confined to uses which are trivial; it can capture uses which, whilst being desirable, sought-after or even important are nevertheless, when viewed in context*, secondary to (or less important than) another use or uses*." (Emphasis added)

24. In his judgment Nugee LJ stated that the statutory words in question were ordinary English words and that neither party had suggested that they had any special or technical meaning (para 34). He expressed his understanding of the ordinary meaning of "incidental" thus (para 44):

> "If I can express it in my own words, one would normally say that use A is incidental to use B if it arises out of use B, something that is done because of use B, or in connection with use B, or as a by-product of use B. Using a laptop to write a shopping list does not arise out of using it to write opinions—it is an independent end in itself, unconnected with the writing of opinions, albeit no doubt very much a subordinate or secondary or lesser one."

25. Nugee LJ addressed the judgment of Pennycuick V-C in *Robson v Dixon* [1972] 1 WLR 1493, which I discuss below, finding it of assistance. He continued (para 48):

> "I agree that it is difficult to regard use A as merely incidental to use B if it serves an independent purpose of its own, unconnected with use B, at any rate if that purpose is of some significance and not trivial or casual. And, contrary to a submission by Ms Shaw, I see no difference between use A being 'merely incidental to' use B and use A being 'no more than incidental to' use B. These to my mind mean the same thing."

26. He held that the relevant considerations in deciding whether the use of the Borgsten to accommodate those working on the Dunbar was incidental to its other uses are "whether its use as such accommodation was an independent end in itself (of some significance), unconnected with its other uses, or whether it was something that arose out of its other uses." (para 50). He held that the FTT had asked themselves the wrong

question and in their summary of the evidence had relied on matters which supported the conclusion that the use of the Borgsten was of secondary or lesser importance than its other uses. He held (para 52) that:

> "The use of the Borgsten for accommodation of those working on the Dunbar was not simply something that arose out of its use as a TSV supplying TAD services to Total. It was an independent end in itself, of some significance—indeed essential if Total was to be able to have more than 60 personnel working on the Dunbar at any one time as it wished. … Put simply the Borgsten was not only used to provide TAD services to the Dunbar, it was also used as an accommodation vessel for the Dunbar. This may have been a 'secondary' use, but it was a significant and independent use and not incidental to its other uses."

(5) The appeal

27. Dolphin appeals to this court. Nicola Shaw KC, who has appeared for Dolphin throughout the proceedings below, advances two principal arguments against the reasoning of the Court of Appeal. In summary, she submits, first, that the FTT were correct in their interpretation of the provision because its legislative history showed that HMRC, after consultation with the oil and gas industry, had confined the hire cap to drilling rigs and accommodation vessels, such as flotels. She submitted that HMRC's interpretation would catch almost all support vessels as they can be expected to have surplus accommodation which can be used to provide accommodation services. If the statutory provision could support either the interpretation put on it by the FTT or that of the Court of Appeal and both were in line with the purpose of the legislation, the court did not have to adopt the most restrictive meaning and it was sufficient that the facts satisfied one of the interpretations. Secondly, if the Court of Appeal's interpretation of the statutory words were correct, the hire of the Borgsten fell outside the scope of section 356LA(3) because the Borgsten would not have been used at all *but for* its use to provide TAD services, which were necessary for Total's drilling campaign. The use of the Borgsten to accommodate offshore workers was a consequence of its use to provide TAD services. The use of the Borgsten (i) to accommodate offshore workers and (ii) to provide TAD services shared the aim of facilitating Total's drilling campaign on the Dunbar.

(6) The interpretation of section 356LA of the CTA 2010

28. In order to construe the critical subsection (3) of section 356LA it is necessary to view it in its statutory context. The most important surrounding provision is subsection

(2) from which it provides an exception. It may be useful to repeat that subsection so far as relevant. It provides:

> "An asset is within this subsection if it is a structure that—
>
> (a) can be moved from place to place … , and
>
> (b) can be used to—
>
> (i) drill for the purposes of searching for, or extracting, oil, or
>
> (ii) provide accommodation for individuals who work on or from another structure used in a relevant offshore area … ('offshore workers')."

This subsection addresses the nature of the vessel or structure (the "relevant asset") and what it can be used to do. It is a widely framed provision. Beyond this subsection and the imposition in section 356N of the hire cap to ring fence the contractor's profits, there is no suggestion of anything in the statutory context which casts light on the meaning of subsection (3).

29. It is not in doubt that at least since the decision of the House of Lords in *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51; [2005] 1 AC 684, the courts have adopted the same purposive approach to interpreting taxing statutes as they do in relation to other enactments. See, for example, *Rossendale Borough Council v Hurstwood Properties (A) Ltd and others* [2021] UKSC 16; [2022] AC 690. Nor is it in doubt that the primary method by which the meaning of a statutory provision is ascertained is by an analysis of the language of the statute: *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 29-31. Other admissible materials play a secondary role, although those materials, by giving the context of the statutory provision, can sometimes illuminate the purpose of a charging or exempting provision.

30. In this case, as Dolphin submits, a consultation document, entitled "Oil and Gas Bareboat Chartering" and issued in February 2014 after the Government had announced its intention to introduce a hire cap, identified asset types which were provided under bareboat arrangements as including "drilling rigs" and "flotels". But in a document entitled "Overview of Tax Legislation and Rates" which HMRC and HM Treasury published on 19 March 2014 the target of the hire cap in the Finance Bill 2014 was stated

as "the amount allowed as a deduction for these charters to companies that provide *drilling services or accommodation services* on the UK Continental Shelf" (emphasis added). The Technical Note issued by HMRC on 1 April 2014 to which a draft Bill was appended referred to the consultation process on the hire cap and stated that the measure "will now only apply to drilling rigs and accommodation vessels". The equivalent section of the draft Bill at that stage referred to "a structure that … (b) can be used to – (i) drill for the purposes of searching for, or extracting, oil, or (ii) provide accommodation for individuals who work on or from a structure used in a relevant offshore area…". After further consultation (i) that which became subsection (2) was amended to capture only assets which can be used to provide accommodation for individuals who work on or from another structure (ie "offshore workers") and (ii) that which is now subsection (3) was introduced.

31. In my view, David Ewart KC, appearing for HMRC, was correct in his submission that in the pre-legislative materials, the term "accommodation vessels" meant the same thing as bareboat charters (of vessels) which "provide accommodation services" and the descriptions were used interchangeably. There is in my view no reliable basis in those materials for the conclusion that the legislation so far as relevant was aimed at vessels whose sole function was to be used as a mobile offshore hotel. I note also that subsection (3), which is predicated on the assumption that a vessel has more than one use, is inconsistent with the argument that the only accommodation-providing asset within the scope of subsection (2) is one with the sole function of providing accommodation. We are therefore sent back to the words of section 356LA(2) to ascertain the target, which is a structure which "*can be used to - ... provide accommodation* for individuals who work on or from another structure used in the relevant offshore area". (Emphasis added)

32. Turning then to subsection (3) which is at the heart of this appeal, it is useful to set it out again:

> "But an asset is not within subsection (2)(b)(ii) if it is reasonable to suppose that its use to provide accommodation for offshore workers is unlikely to be more than incidental to another use, or other uses, to which the asset is likely to be put."

33. The words "it is reasonable to suppose that its use" and the references to likelihood set up an objective test looking to the future at the start of an accounting period against the backdrop of what the parties have contracted for. It is also clear that the use to provide accommodation for offshore workers is to be assessed against another use or uses to which the structure is put. The critical question is the meaning of "incidental to" in the phrase as a whole: "its use to provide accommodation for offshore workers is unlikely to be more than incidental to another use, or other uses, to which the asset is likely to be put".

34. Like Nugee LJ, I consider that the words "incidental to another use" in the context of subsection (3) are words which should be given their ordinary meaning. In this context use A of the asset must be incidental to *use B* (or uses B and C) *of that asset*. That is what subsection (3) states. On the facts found by the FTT the Borgsten had a primary use of providing TAD service to the Dunbar. It also had a secondary use of providing accommodation services to offshore workers who worked on the Dunbar. Indeed, the amended contract between Total and Dolphin provided for the increase in the accommodation available on the Borgsten to enable the accommodation to meet Total's requirements and Total paid for that. See para 12 above. The provision of accommodation services was not incidental to the use of the Borgsten to provide TAD services as it was a separate service or use and was independent of the provision of the TAD services. In my view use A of an asset, which is important or even essential, can be secondary or subordinate to another use of the asset, use B. But if use A does not arise out of use B, it is an independent use and it is not incidental to use B. In this I wholly agree with Nugee LJ's analysis in particular in paras 44, 48 and 52 of his judgment which I have quoted in paras 24-26 above.

35. That conclusion disposes of some of the other arguments which Ms Shaw advances in her alternative submission. I reject the argument that because the Borgsten was connected to the Dunbar in order to provide TAD services, that made its provision of accommodation to the Total personnel incidental to the provision of the TAD services. In essence the submission is: but for the connection of the Borgsten to the Dunbar it would not have provided the accommodation services. That is not the test: use A must be incidental to use B of the Borgsten. Similarly, the arguments that (i) but for the provision of the TAD services there would have been no drilling campaign and no need for the provision of accommodation and (ii) all the services provided by the Borgsten were to facilitate Total's drilling activity, founder on the same rock.

36. Dolphin also argues that because almost all support vessels were expected to have some surplus accommodation which could be used to provide accommodation services to offshore workers, and the operator is likely to make use of such surplus accommodation, all or almost all TSVs will be caught by the hire cap if HMRC's interpretation is correct. The use of the Borgsten to accommodate offshore workers should rather be seen as no more than a consequence of its provision of TAD services. While I would accept that a use of accommodation on a TSV which is trivial or casual may not be more than incidental to the provision of TAD services or some other use, those are not the circumstances of this appeal where Total stipulated for the use of extensive accommodation on the Borgsten and extra accommodation on the Borgsten was created for and paid for by Total.

37. Ms Shaw also argues that because there were up to 40 unused berths on the Dunbar, a significant majority of the offshore workers who were accommodated on the Borgsten were so accommodated not of necessity but as a result of Total's choice. That choice, she submits, arose because the Borgsten was used to provide TAD services and was connected to the Dunbar. There is nothing in this argument. Total contracted with Dolphin for the

provision of accommodation and paid for the increase in the accommodation available on the Borgsten. Total needed the accommodation services of the Borgsten to enable it to have more than 60 personnel working on the Dunbar. That was the contractual background which the court must address when considering the application of section 356LA(3) to the facts of the case.

38. Both the Court of Appeal and the UT discussed the judgment of Sir John Pennycuick V-C in *Robson v Dixon* (para 25 above). The taxpayer in that case was a commercial pilot employed by Royal Dutch Airlines based at Schiphol Airport, Amsterdam. His family home was in England, and he kept a small flat at Amstelveen, near Schiphol Airport from which he flew aeroplanes to various parts of the world, largely in North, Central, and South America. On a relatively small number of occasions when flying from or to Schiphol he would land and take off from airports in the United Kingdom. He disputed the Inland Revenue's assertion that he was UK resident and therefore chargeable to UK income tax. Sections 10 and 11 of the Finance Act 1956 had the effect of excluding from liability to UK income tax a UK resident who performed all the duties of his employment wholly outside the UK. Section 11(3) extended that exclusion to a person employed to work outside the UK but who performed some duties of employment in the UK if the performance of those duties was "merely incidental to the performance of the other duties outside the United Kingdom". (That provision now appears in substantially the same terms in section 39 of the Income Tax (Earnings and Pension) Act 2003.) Sir John Pennycuick gave those words what he saw as their natural meaning, stating (p 1498):

> "The words 'merely incidental to' are upon their ordinary use apt to denote an activity (here the performance of duties) which does not serve any independent purpose but is carried out in order to further some other purpose."

He held that Captain Robson did not come within the extended exclusion in section 11(3) as his duties of flying from the Netherlands and on occasion stopping off at Heathrow or another airport in the UK before flying to an ultimate destination in America were simply coordinate duties.

39. The case of *Robson* is concerned with a different statutory provision in a different statutory context and context can alter the meaning of words in a statute. But Sir John Pennycuick's conclusion as to the ordinary meaning of the words "incidental to" is consistent with the interpretation of those words which Nugee LJ and I favour.

40. When seeking permission to appeal to this court, Dolphin argued that the case raised a point of law of general public importance because of the frequency of the use of the words "incidental to" in other taxing statutes. It was striking however that in the appeal

hearing Dolphin did not refer the court to such statutes in support of this contention. An examination of the CTA 2010 reveals that in some sections phrases such as "incidental purposes" or "incidental costs" are given a specific statutory definition. See, for example, sections 79, 163(6), and 207.

41. Section 40B of the Corporation Tax Act 2009 addresses what is stated in its heading as incidental income from an office or employment received by professionals in practice. The section sets out conditions for its application, so as to treat such receipts as a receipt of a trade carried on by the firm. Those conditions include that the time spent by the individual in performing the duties of the office or employment and the amount of payment therefor are insubstantial in comparison to the time spent in carrying on the individual's profession and the receipts of the firm. In that context the word "incidental" in the heading of the section is associated with quantitative conditions which are closer to the approach favoured by the FTT but that is the result of the terms of the statutory condition in section 40B(3). By contrast in section 131 of the same Act the incidental costs of obtaining finance by means of issuing shares are defined in subsection (4) in a way which is consistent with the interpretation which I favour on this appeal as the costs are incurred for the purpose of obtaining the finance. See also section 58 of the Income Tax (Trading and Other Income) Act 2005 and section 38 of the Taxation of Chargeable Gains Act 1992 which adopt a similar approach to the definition of "incidental costs".

42. In my view, those provisions do not assist in the determination of this appeal. It is not appropriate that this court should make any rulings on the meaning of the phrase "incidental to" or "incidental" in statutory contexts other than the context of the provision which is the subject of this appeal, as regard must be had to the context in which a phrase is used in a statute.

(7) Conclusion

43. I would dismiss the appeal.