



Press Summary

24 June 2025

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

[2025] UKSC 24

On appeal from [2024] EWCA Civ 1

Justices: Lord Hodge (Deputy President), Lord Burrows, Lady Rose, Lord Richards and Lady Simler

Background to the Appeal

Total E&P UK Ltd (“**Total**”) carry on drilling activities at the Dunbar oil platform (the “**Dunbar**”) in the North Sea. The Dunbar lacks facilities for active drilling operations. To enable the Dunbar to perform active drilling operations it requires the support of a tender support vessel (“**TSV**”) designed to provide tender assisted drilling (“**TAD**”) services. TSVs are distinct from accommodation vessels which are solely used as offshore hotels (commonly known as “**flotels**”). Total wanted to recommence drilling at the Dunbar in 2012 and invited Dolphin Drilling Ltd (“**Dolphin**”) to tender for the provision of a TSV for the Dunbar. Dolphin proposed to use a semi-submersible drilling rig that could be converted into a TSV called the Borgsten Dolphin (“**the Borgsten**”) which it leased from an associated company, Borgsten Dolphin Pte Ltd (“**BDPL**”).

On 11 November 2011, Total awarded Dolphin the contract to supply TAD services to the Dunbar. In addition to providing TAD services, the Borgsten had accommodation for 102 people. The contract to supply TAD services stated that the Borgsten would supply accommodation for its own crew and 40 Total personnel. On 1 May 2012, Total and Dolphin agreed to a change order to increase the accommodation capacity on the Borgsten to 120 people, which Total paid for.

This appeal is concerned with Dolphin’s tax returns for the accounting periods ending 31 December 2014 and 31 December 2015. Part 8ZA (sections 356K-356NJ) of the Corporation Tax Act 2010 (“**CTA 2010**”) sets out the corporation tax treatment of “oil contractor activities”. Dolphin assumed that it was entitled to take into account in the calculation of its profits the entirety of the fees it paid to BDPL. Section 356N imposes a hire cap on contractors operating within the UK territorial sea or Continental Shelf. This hire cap restricts the deduction of payments under leases between connected parties in respect of any “relevant asset” in calculating the profits of the paying contractor from its “oil contractor activities”. Section

356LA(2) outlines that a relevant asset includes a structure that can be moved from place to place without major dismantling or modification and can be used to provide accommodation for individuals that work on or from another structure used in the offshore area (“**offshore workers**”). The Total personnel who worked on the Dunbar but were accommodated on the Borgsten were considered “offshore workers” as they worked from another structure. Section 356LA(3) outlines that a structure will not be considered a “relevant 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.”

HMRC determined that the Borgsten was a “relevant asset”, therefore the hire cap applied, which restricted the tax deductions available to Dolphin. HMRC issued a closure notice in relation to Dolphin’s tax return for year ended 31 December 2014 calculating the extra corporation tax payable at £4,039,309.26. A similar closure notice was issued in relation to the Dolphin’s tax return year ended 31 December 2015, the additional corporation tax in this case being £2,691,385.73.

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 section 356LA(3) of the CTA 2010.

Judgment

The Supreme Court unanimously dismisses the appeal. It holds that the words “incidental to another use” mean a use that arises out of the primary use, rather than an independent use. In this case, the use of the Borgsten for accommodation services was independent from its use for TAD services and therefore the hire cap applies. Lord Hodge gives the judgment, with which the other Justices agree.

Reasons for the Judgment

The primary method for interpreting the meaning of a statutory provision is to analyse the language of the statute. Other admissible materials play a secondary role, although by giving the context of the statutory provision, they can sometimes illuminate the purpose of a provision [29].

In order to interpret section 356LA(3) of the CTA 2010, it is necessary to view that provision in its statutory context. The most important surrounding provision is section 356LA(2) which addresses the nature of the vessel or structure and what it can be used to do. There is no suggestion of anything in the statutory context that casts light on the meaning of section 356LA(3) [28].

The pre-legislative materials illustrate that the term “accommodation vessels” in section 356LA(2) is intended to have the same meaning as bareboat charters of vessels which provide accommodation services. There is no reliable basis in the pre-legislative materials to support the conclusion that the legislation was aimed at vessels whose sole function is to be used as mobile offshore hotels (or “flotels”). Further, the language of section 356LA(3) is predicated on the assumption that a vessel has more than one use [31].

Turning to the language of section 356LA(3), the critical question is the meaning of the words “incidental to” in the context of the phrase as a whole. The words “incidental to another use” should be given their ordinary meaning. In this context, use A of the asset must be incidental to use B (or uses B or C) of that asset. The Borgsten had a primary use of providing TAD services to the Dunbar and a secondary use of providing accommodation services to offshore workers on the Dunbar. Further, Total and Dolphin agreed to increase the accommodation available on the Borgsten, which Total paid for. Therefore, the provision of accommodation services was not incidental to the use of the Borgsten to provide TAD services, it was a separate

service or use independent of the provision of TAD services. In other words, use A of an asset, which is important or 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 is not incidental to use B [33]-[34].

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](#)