A HIGH COURT OF JUSTICE (CHANCERY DIVISION)—21, 22 AND 29 JULY 1980

COURT OF APPEAL—7, 8, 9, 12 AND 13 OCTOBER AND 10 NOVEMBER 1981

HOUSE OF LORDS—11, 12 AND 13 OCTOBER AND 16 DECEMBER 1982

**Clark (H.M. Inspector of Taxes) *v.* Oceanic Contractors Incorporated(([1])**

*Income tax, Schedule E—Non-resident employer—Employees working in U.K. sector of North Sea—Whether employer liable to deduct tax from*
B *emoluments—Income Tax (Employments) Regulations* 1973*—Income and Corporation Taxes Act* 1970, *s* 181 *and s* 204*—Finance Act* 1973, *s* 38*—Continental Shelf Act* 1964

A foreign company which was not resident in, but maintained places of business within the United Kingdom, engaged personnel (United Kingdom residents and others) to work on barges and other vessels in the United
C Kingdom sector and other sectors of the North Sea. The employees were paid in U.S. dollars by cheques drawn in Brussels on a New York bank account. Cheques might be (*a*) deposited in a bank designated by the employee, (*b*) seat to any person designated by the employee or (*c*) delivered to the employee himself on his barge or vessel.

The Inspector considered that the company was liable by virtue of s 204 of
D the Income and Corporation Taxes Act 1970 and the Income Tax (Employments) Regulations 1973, to deduct income tax from the emoluments so paid. He accordingly made a determination under regn 29 of these regulations. The company appealed against the determination.

The Special Commissioners allowed the appeal on the following grounds:

(1) United Kingdom legislation is territorial in extent;
(2) the fact that the company maintains places of business in the United Kingdom does not bring the case within the territorial principle;
(3) the United Kingdom sector of the North Sea is not part of the United Kingdom and s 38(6), Finance Act 1973, does not deem that it is;
(4) the emoluments were paid abroad where the cheques were posted; and
(5) s 204 and the regulations made under it do not apply to a non-resident employer which was paying emoluments abroad for work done outside the United Kingdom.

The Crown appealed.

E The Chancery Division, allowing the Crown's appeal held (1) that s 204 applies where the duties of an office or employment are carried out within the United Kingodm whether or not the employer is foreign and whether or not the emoluments are paid abroad; (2) that since by virtue of s 38(6), Finance Act 1973, duties carried out in the United Kingdom sector of the North Sea are to be treated as if they were carried out in the Untied Kingdom, s 204 should be
F construed so as to extend to emoluments in respect of such duties; (3)accordingly that an employer is required to deduct tax from emoluments paid to employees working in the United Kingdom sector of the North Sea.

([1]) Reported (Ch D) [1980] STC 656; 124 SJ 595; (CA) [1982] 1 WLR 222; [1982] STC 66; 126 SJ 34; [1983] 2 AC 130; (HL) [1983] 2 WLR 94; [1983] 1 All ER 133; 127 SJ 54.

*Per curiam:* emoluments paid by methods (*a*) and (*b*) are to be regarded as A
being paid abroad. The company appealed.

The Court of Appeal, unanimously allowing the company's appeal, held, (1) that a foreign employer, resident abroad, paying emoluments in foreign currency outside the United Kingdom to an employee in respect of duties performed outside the United Kingdom is not required to deduct tax from those emoluments; (2) that a foreign employer does not render himself liable to B
the duties imposed by s 204 by mere presence in the United Kingdom enabling process to be served upon him; and (3)that the learned Judge was wrong in holding that the Crown's rights in the United Kingdom sector of the North Sea provide a link between that sector and the jurisdiction of Parliament so as to justify so construing s 204 as to impose its burden on all who employ persons on exploration or exploitation activities therein. C

*Per* Brightman L.J.: A foreign corporation or individual employer, who is resident in the United Kingdom or has a paying agent in the United Kingdom, and employes a person to perform duties in the United Kingdom, is required to operate or to permit his paying agent to operate the PAYE system of deduction and repayment and it may well be that the net is cast wider than that. The Crown appealed. D

*Held*, in the House of Lords, allowing the Crown's appeal by a majority and restoring the order of the Chancery Division, that a territorial limitation other than that specified in Schedule E was to be implied into s 204, but (Lords Edmund-Davies and Lowry dissenting) that the company had subjected itself to the liability to operate PAYE in respect of the emoluments of its employees chargeable to income tax under s 38(6) of the Finance Act 1973 by reason of E
the facts that (*per* Lord Scarman), it carried on a trade in the United Kingdom, which included its operations in the North Sea, and thereby had a "tax presence" which was determinant of s 204 liability; and (*per* Lord Wilberforce) it carried on a trade in the United Kingdom through a branch or agency which was within the taxing provisions of s 246 of the Income and Corporation Taxes Act 1970 in respect of its activities in the United Kingdom sector of the F
continental shelf by virtue of s 38(4) of the Finance Act 1973.

*Per* Lord Wilberforce: "The respondent company contends, and the Court of Appeal has held, that the provisions regarding collection of tax by deduction from wages can never have been intended to apply to a foreign company, non-resident in the United Kingdom, which makes payments outside the United Kingdom. In my opinion this contention is erroneous, G
because it is based upon a mistaken application or understanding of the 'territorial principle'. That principle, which is really a rule of construction of statutes expressed in general terms, and which is as James L.J. said a 'broad principle', requires an inquiry to be made as to the persons with respect to whom Parliament is presumed, in the particular case, to be legislating."

H

## CASE

Stated under the Taxes Management Act 1970, s 56, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 13 and 14 July 1978 Oceanic Contractors Inc. I
(hereinafter called "Oceanic") appealed against a determination by the

Inspector of Taxes under Regn 29 of the Income Tax (Employments) Regulations 1973 (SI 1973 No.334) that tax amounting to £2,033,254 was payable by Oceanic to the Collector under Reg 26 of those Regulations for the year 1977–78, which tax had not been so paid.

2. Shortly stated the question for our decision was whether Oceanic was required by s 204 of the Income and Corporation Taxes Act 1970 to deduct tax in accordance with regulations made under that section from emoluments paid, in the circumstances described below, to employees engaged to work on barges in the North Sea in connection with pipe-laying and other operations.

3. We had before us a statement of facts agreed between the parties in the following terms:—

(1) Oceanic is a company incorporated under the laws of Panama and has its registered office at Via Espana 120, Panama, Republic of Panama. It is a wholly owned subsidiary of J. Ray McDermott & Co. Inc., a public listed company incorporated under the laws of the State of Delaware, United States of America which has its registered office at 100 West 10th Street, Wilmington, Delaware and its principal place of business at 1010 Common Street, New Orleans, Louisiana and the common stock of which is listed on the New York Stock Exchange.

(2) Oceanic's operations extend throughout the world, including the Middle East, the Far East, Africa and Central and Southern America. Oceanic is not resident for tax purposes in the United Kigndom. It does, however, have a permanent estabishment on the United Kingdom mainland and is liable to United Kingdom corporation tax on its profits from activities in the United Kingdom and the United Kingdom continental shelf, all of which are taxed as a single trade. It is an overseas company to which s 407 of the Companies Act 1948 applies and has complied with the requirements of that section. Its address for service in Great Britain is McDermott House, 140 Wembley Park Drive, Wembley, HA9 7DG.

(3) Functionally, the group's marine activities (which include the activities of Oceanic) extend to the design and manufacture of equipment used in the exploration and exploitation of oil and natural gas as well as pipelaying and maintenance work. In the course of carrying on these activities a number of branches outside the United States of America have been established. These include the following four Oceanic branches from which operations are carried on within the United Kingdom and areas of the North Sea which are designated areas for the purposes of the Continental Shelf Act 1964:—(*a*) a design office in Wembley; (*b*) a platform fabrication yard at Ardersier (near Inverness); (*c*) a branch in Aberdeen from which Oceanic provides the skilled services required to connect an oil-producing rig to a pipe-line laid to take the oil ashore, as well as general expertise in off-shore oil production; (*d*) a branch in Brussels which is the headquarters of Oceanic's North Sea division, the operations of which are themselves based in Antwerp.

(4) The North Sea division is engaged in the installation and maintenance of platforms and the laying of pipe-lines thereto in both the United Kingdom and the Norwegian sectors of the North Sea, for which purpose it operates derrick barges, pipelaying barges and other vessels. During the 1977 operational season there were approximately 400 employees of Oceanic engaged in operations in the North Sea and carried on the payroll of the North Sea division in Brussels. These employees were principally skilled welders, supervisors, engineers and diving superintendents. Less skilled workers such as riggers, cooks, derrick hands, etc., of whom between 200 and 300 work on

Oceanic's barges were normally engaged through sub-contractors. The North A
Sea division did not then employ divers, (it now does), who were either
sub-contractors or employed by sub-contractors. Brussels was chosen as the
headquarters of the North Sea division, with Antwerp as its operating base,
principally because of the suitability of the port of Antwerp with its stable
labour situation and facilities for docking vessels.

(5) Approximately 60 per cent. of those employed by the North Sea B
division (based in Brussels) are United Kingdom nationals. Approximately 40
per cent. are citizens of other countries, principally the United States of
America.

(6) Oceanic has a subsidiary called J. Ray McDermott & Co. (U.K.) Inc.
which has a place of business at Yarmouth and procures materials required for
the North Sea operations. It also stores some of the materials required by C
Oceanic in its North Sea operations such as paint, wire, etc. Much of the
advertising and recruitment for personnel required by the North Sea division is
conducted from the Yarmouth office of this company and for recruitment
purposes supervisors and managers come to Yarmouth from Brussels to take
part in interviews. For the remainder of the staff required by the North Sea
division recruitment is effected elsewhere, either in Brussels or in the United D
States of America. All employment contracts are signed on behalf of Oceanic
in Brussels. Barges are initially crewed from Antwerp and personnel are
collected there prior to departure of the barge at the start of the contract. The
United Kingdom ports are used only for purposes of leave and as supply bases.

(7) All employment contracts for employees (as opposed to sub-
contractors) operating in the North Sea are with Oceanic. An example of such E
a contract is annexed hereto as appendix A(1). Construction personnel are
usually engaged for six months. Maintenance personnel are usually engaged
for one year. Employees work 25 days offshore and then have five days shore
leave.

(8) The control and management of all offshore personnel is from
Antwerp or Brussels. The activities of the personnel in the barge itself are F
supervised by the barge master and construction superintendent who refer any
important administrative or technical matters to Brussels or Antwerp.
Management problems seldom arise on a rig as all relevant information is
stated in the employment contract. The employment contract specifies hourly
rates, and in general, only one rate applies although there is a specific overtime
rate if more than eight hours working is involved. The situation is thus G
relatively straightforward and disputes seldom arise; although there are
occasional problems when supply boats are prevented by bad weather from
taking men off the barges, these problems are usually solved amicably.

(9) All employees who are on the payroll of the North Sea division are
employed under contracts signed on behalf of Oceanic in Brussels and are paid
in U.S. dollars by cheques made out in Brussels, but drawn on Oceanic's bank H
account in New York. Payment is made into the bank account of the
individual employee's choice, or is sent direct to his home address or to the job
location. Oceanic operates PAYE under the Income Tax (Employments)
Regulations 1973 in relation to the employees on the payrolls of its Wembley,
Aberdeen and Ardersier branches which are administered locally. It also
operates PAYE in relation to some 20 employees who work at Ardersier and I
Aberdeen but are paid from Brussels. These are semi-permanent employees

(1) Not included in the present print.

A whose employment is likely to continue for between four and five years. They are people who come from outside the Unted Kingdom whose salaries are paid in U.S. dollars. They are paid from Brussels because the Ardersier and Aberdeen branches do not have dollar bank accounts. The operation of PAYE in relation to them is administratively burdensome since it involves, for example, converting each monthly salary payment into sterling at the
B prevailing rate of exchange. Apart from these 20 or so employees, Oceanic does not operate PAYE in relation to its employees paid from Brussels.

(10) On 11 December 1975, a meeting was held at Oceanic's request between Oceanic and the Inland Revenue. At this meeting it was agreed between Oceanic and the Inland Revenue that Oceanic should not apply PAYE to the emoluments of employees on the payroll of its North Sea division. At a
C further meeting between Oceanic and the Inland Revenue on 14 April 1977 held at Oceanic's request to discuss certain related matters, the Inland Revenue indicated that in its veiw the agreement reached in 1975 should no longer apply and contended that PAYE should be operated by Oceanic's Brussels branch in respect of Oceanic's North Sea division employees. Oceanic did not accept that it was obliged or even entitled to operate PAYE at its Brussels branch.

D The specimen contract referred to in subpara (7) above is annexed to and forms part of this case, marked exhibit A([1]).

4. Oral evidence was given before us by Mr. Timothy Wayne Miciotto, a United States citizen, who has been employed by Oceanic for the past seven years and since August 1974 has worked in Brussels as group controller responsible to the group vice-president of the North Sea area for financial,
E data-processing and similar matters. From his evidence we find the following additional facts:—

(i) Oceanic employs more than 10,000 people throughout the world, of whom nearly 5,000 work in western Europe. Their disposition (in round figures) is as follows:—

| | | |
|---|---|---|
| Aberdeen | 1,500 | |
| Ardersier | 2,300 | (1,600 in 1977) |
| Wembley | 400 | |
| North Sea Division | 500 | (200 in Brussels: the rest on barges) |
| | 4,700 | |

The number working on the barges was 400 in 1977 but has now fallen to 300
F because of reduced activity in that area.

(ii) The headquarters of the North Sea division was established in Brussels in late 1972, while negotiations were in progress for docking and warehousing facilities to be obtained at Antwerp. Those negotiations were completed in 1973 and the barges were then moved into the area.

(iii) The choice of Brussels as the administrative centre was dictated
G mainly by operational considerations once Antwerp had been selected as the deep-water port from which the barges were to operate. Communications between Brussels and Antwerp were good and the barges could communicate directly with Brussels via Radio Antwerp. It was also better from Oceanic's tax point of view that the operations should not be based in the United Kingdom

([1]) Not included in the present print.

since, as a Panamanian company, it would not have had the benefit of any A
double-taxation treaty with the United Kingdom.

(iv) The operational season usually lasts from the beginning of April to
the end of September or, if the weather is unusually good, to the end of
October. The construction workers, who put together and lay the pipe-lines,
are normally engaged for a season of 180 days but the maintenance workers,
who continue to maintain the barges throughout the winter, have twelve- B
month contracts.

(v) An employee who is a U.K.-national, having been recruited through
the office of Oceanic's associated company at Great Yarmouth, would usually
sign his contract in England and the contract would then go to Brussels for
signature on behalf of Oceanic.

(vi) Once engaged an employee is required to report to the operational C
base at Antwerp and from there he is taken out to the barges, which may be in
any of the national sectors of the North Sea. Since 1973 40 per cent. of
Oceanic's activity has been in the U.K. sector.

(vii) During a single operational season an employee may work on more
than one barge and in more than one sector. A single operation—for example
driving the piling into the seabed for a new platform—may involve work in D
more than one sector since a platform may straddle the boundary between two
sectors. Laying a pipeline from one national sector to another will require the
barges to be moved from one sector to another as work proceeds.

(viii) Exhibit A is the standard form of contract between Oceanic and a
United States national. The only relevant difference in the case of employees
of other nationalities is that on page 2, for the paragraph headed E
"Deductions—Income, FICA and other taxes", there would be substituted a
paragraph in the following terms:—

> "Deductions—Income Tax. There may be withheld from your pay
> the amount which, in the opinion of counsel for the Employer, is required
> or may be required for the payment of income taxes under the laws of any
> country in which you may work. Such amount will be paid over to such F
> Governments to the extent required for the payment of such taxes. The
> balance, if any, will be paid to you when, in the opinion of counsel for the
> Employer, no further payments on account of such taxes are, or may be,
> required."

(ix) Having chosen the method of payment which suits his circumstances
the employee is required to sign the entries under "Payroll Information" on G
page 6 of the contract. The arrangements adopted in exhibit A represent a
common choice whereby a small proportion of his pay is sent to the employee
on the barge in the form of a cheque and the balance is sent to his bank (also in
the form of a cheque). The cheque to the employee (having been made out in
Brussels) is delivered to him by messenger on the barge, where the employee
can cash it in dollars and spend it on articles stocked by catering H
sub-contractors on board the barge to meet the employee's day-to-day
requirements. Cheques to banks or to nominated individuals are sent by post
from Brussels. All payroll records for the North Sea division are kept in
Brussels.

(x) In the year 1977–78 a number of cheques were sent, under those
arrangements, by post to banks in the United Kingdom or to individuals living I

A in the United Kingdom. Information was not available at the hearing as to the number of cases in which this occurred.

(xi) Oceanic found no great difficulty in operating the PAYE system in respect of the 20 employees referred to in para 3(9) above who lived and worked in the United Kingdom: it was only necessary for the Brussels or New Orleans office to keep itself informed of the current rate of exchange. Oceanic B had agreed with the Inland Revenue that it would deduct tax in those cases although it did not admit that it was bound to do so. The position was more complicated in the case of employees on the barges since they might work in more than one sector and Oceanic did not always know an employee's tax status. Some of the U.K.-nationals whom it employed were resident in other countries.

C (xii) At the meeting on 11 December 1975 the Inland Revenue had asked whether Oceanic, although unwilling to operate the PAYE system in respect of employees on the barges, would provide the names and addresses of all employees who had worked in the United Kingdom sector and the earnings which they had derived from that work. After consultation with their office in Brussels Oceanic's representatives had agreed to do this and had subsequently D provided this information.

(xiii) The Inland Revenue had indicated at the time that they would accept that arrangement as a practical solution and would not seek to establish Oceanic's liability to deduct tax in those cases so long as the law remained unchanged.

5. It was contended on behalf of Oceanic:—

E (1) that the general presumption of limited territorial extent applies to taxing statutes as to other statutes;

(2) that, in construing the effect of a statute in relation to a particular act regard must be had (*a*) to the status (by reference to nationality or residence) of the person in relation to whom the statute is invoked: and/or (*b*) to the place at which the act is performed;

F (3) that s 204 of the Income and Corporation Taxes Act 1970 did not apply in relation to the payment by Oceanic of emoluments to the persons employed on the North Sea barges since Oceanic was neither registered nor resident nor domiciled in the United Kingdom and payment was made outside the United Kingdom;

(4) that the act to which s 204 applies is the making of any payment (at G which time any tax deduction must be made), which act in the instant case took place in Brussels on the cheque being drawn there; that was the method of payment contemplated by the employee's employment contract and payment was made in accordance therewith; alternatively that payment was effected by acceptance of the cheque by the Bank in New York; and that on any view payment was made, for the purposes of s 204, outside the United Kingdom;

H (5) that tax was recoverable from those of the employees who were subject to the United Kingdom tax laws by direct assessment and not by deduction of tax under the PAYE system.

6. It was contended on behalf of the Inspector of Taxes:—

(1) that, on the proper construction of s 204 of the 1970 Act, Oceanic was required to deduct tax in accordance with the Income Tax (Employments) I Regulations 1973 from all emoluments paid to employees who were chargeable

to tax on those emoluments under Schedule E, since the territorial extent of s 204 was determined by the scope of the Schedule E charge; A

(2) that under s 181 of the 1970 Act emoluments in respect of duties performed in the United Kingdom by both residents and non-residents were chargeable to tax under Schedule E;

(3) that, for income tax purposes s 38 of the Finance Act 1973 deemed duties performed in any area designated under the Continental Shelf Act 1964 B
to be duties performed in the United Kingdom;

(4) alternatively, that s 204 applied whenever Oceanic made payment in the United Kingdom of emoluments chargeable to tax under Schedule E and payment by cheque was not effected until the cheque was received by the nominated recipient or, possibly, until funds had been received by the recipient's bank account; C

(5) that, once the point of principle had been decided, the proceedings should be adjourned for agreement of the amount payable by Oceanic under Regn 29 of the Income Tax (Employments) Regulations 1973.

7. The following cases were cited to us:—Ex parte *Blain*, In re *Sawers* (1879) 12 Ch D 522; *Colquhn* v. *Heddon* 2 TC 621; (1890) 25 QBD 129; *Cooke* v. *The Charles A. Vogeler Co.* [1901] AC 102; *Tomalin* v. *S. Pearson & Son,* D
*Ltd.* [1909] 2KB 61; In re *Debtos* [1936] 1 Ch 622; In re *Dulles Settlement, Dulles* v. *Vidler* [1951] Ch 265; *Attorney-General for Alberta and Another* v. *Huggard Assets Ltd.* [1953] AC 420; *C.E.B. Draper & Son Ltd.* v. *Edward Turner & Son Ltd. and Others* [1965] 1 QB 424.

8. We, the Commissioners who heard the appeal, took time to consider our decision and gave it in writing on 14 August 1978 as follows:— E

(1) The appellant company ("Oceanic") appeals against a determination, made by the Inspector of Taxes under Regn 29 of the Income Tax (Employments) Regulations 1973, that it was liable to pay the sum of £2,033,254 for the year 1977–78 under the PAYE system. The question in issue is whether Oceanic was required to operate that system in respect of employees working, as described below, on barges in the North Sea. F

(2) Oceanic was incorporated in Panama, where it now has its registered office, and is a subsidiary of J. Ray McDermott & Co. Inc., a company incorporated in the United States of America. Oceanic is not resident in the United Kingdom for tax purposes but it has places of business in this country.

(3) The group's marine activities include the design and manufacture of equipment used in the exploration for the exploitation of oil and natural gas G
resources, the work of pipe-laying and the maintenance of the equipment in use. The group has a number of branches outside the United States of America including four branches run by Oceanic in connection with operations in the North Sea; namely: (i) a design office at Wembley; (ii) a platform fabrication yard at Ardersier, near Inverness; (iii) a branch at Aberdeen which provides skilled services connected with the bringing ashore of oil from the oil rigs H
through pipelines; (iv) a North Sea Division with its headquarters in Brussels and its operational centre at Antwerp. This appeal is not concerned with the first three of those branches: employees at those branches are wholly administered and paid in the United Kingdom and the PAYE system is operated in respect of them. The issue relates to employees of the North Sea Division who are engaged on the installation and maintenance of platforms I

A and the laying of pipe-lines in various sectors of the North Sea, including the United Kingdom sector.

(4) In 1977 Oceanic had 400 employees working on barges in the North Sea, 60 per cent. of whom were British and 40 per cent. were of other nationalities, mainly American. The British personnel had been recruited at Great Yarmouth, where another company in the group maintains a supply
B office in support of the North Sea operations. Interviews were conducted at Great Yarmouth, by management staff who came from Brussels for the purpose. All contracts of employment were signed on behalf of Oceanic in Brussels, although the employee would first have signed in the United Kingdom.

(5) Once employed the employees had to report to Antwerp to join a
C barge setting out for the site in the North Sea. The United Kingdom ports are used only for leave and as supply bases. The barges can operate only from the beginning of April to the end of September or, if weather conditions are unusually favourable, the end of October. Contracts for the construction workers are accordingly for a working season of 180 days: but the maintenance workers are normally employed for a year since they are required
D to maintain the barges and equipment in Antwerp during the winter.

(6) The employees' remuneration is paid by two instalments in each month, the number of hours worked in each case having been notified to Brussels by telex. Payment is made in United States dollars by cheques made out in Brussels and drawn on Oceanic's bank account in New York. The contract of employment enables the employee to choose any two of the
E following methods of dealing with those cheques: (*a*) deposit in a bank of the employee's choice; (*b*) payment direct to a person designated by him; (*c*) payment direct to him. A common arrangement is for a cheque for a small amount to be sent to the employee on the barge (where it can be cashed in dollars and used for pocket money) and the major part to be sent to a bank. It is common ground that in the period relevant to this appeal a number of
F cheques would have been sent, in this way, directly to banks in the United Kingdom.

(7) Under an international convention on the Continental Shelf which was signed at Geneva on 29 April 1958, and came into force on 10 June 1964 the United Kingdom is recognised as a "coastal state" with sovereign rights over the continental shelf adjacent to its coast, but outside its territorial
G waters, for the purposes of exploring it and exploiting its natural resources. Where the rights of two or more states overlap, the boundary is to be fixed by agreement or, in default, by the application of a median line.

(8) The Continental Shelf Act 1964 contains provisions in our domestic law relevant to the exercise of the rights recognised by the Geneva Convention and, for the application of those provisions, enables an area to be
H "designated" by Order in Council. The consequences for tax purposes of such a designation are set out in s 38 of the Finance Act 1973 of which subs (6) reads:

> "Any emoluments from an office or employment in respect of duties performed in a designated area in connection with exploration or

exploitation activities shall be treated for the purposes of income tax as A
emoluments in respect of duties performed in the United Kingdom."

(9) Oceanic's employees can be assigned to any sector of the North Sea where work is in progress. The barges have no means of self-propulsion. Tugs stand by to move them as required and a barge may, in the course of one season, work partly in the United Kingdom sector and partly in another country's sector: for example, when laying a pipeline from Norway to the B
United Kingdom it will move from one sector to another. Employees may move from one barge to another and, in so doing, from one sector to another. It is agreed that, in the year 1977, some work was done in the United Kingdom sector.

(10) In 1975 Oceanic, being anxious to advise its employees as to their tax position, arranged a meeting with representatives of the Inland Revenue. At C
this meeting, held on 11 December 1975, no agreement could be reached as to Oceanic's position under the PAYE legislation. The Inland Revenue indicated however, that they would not press their view that tax was deductible by Oceanic from wages paid if Oceanic would supply the names and addresses of their employees and their earnings derived from working in the United Kingdom sector. This, after discussion with their head office, Oceanic's D
management agreed to do. However in 1977 the Inland Revenue changed their attitude and told Oceanic that they would seek to establish its liability to deduct and account for tax under PAYE. Hence has arisen the determination under appeal.

(11) Section 204 of the Income and Corporation Taxes Act 1970, which forms the basis of the PAYE system, provides that: E

> "On the making of any payment of, or on account of, any income assessable to income tax under Schedule E income tax shall, subject to and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment ...."

and the regulations provide the familiar procedure whereby the Inspector issues a deduction card to the employer, containing the employees code, and F
the employer is required to deduct or repay tax by reference to that code "on making any payment of emoluments" to the employee (Regn 6 of the 1973 Regulations).

(12) It is admitted by Oceanic that in the year 1977 some of its employees working on the barges were assessable to United Kingdom income tax under Schedule E in respect of some, at any rate, of their emoluments; but it is G
contended that Oceanic was not liable, as employer, to deduct tax from any of those emoluments because: (1) in accordance with well-established rules as to the territorial extent of United Kingdom legislation s 204 of the 1970 Act could not be construed as applying to transactions carried out overseas by foreign residents unless there were a clear indication to that effect in the section: and there was no such indication: (2) on the facts of this case no relevant part of H
the transaction took place within the United Kingdom: the contracts of employment were concluded in Brussels, the wages were paid there and the occasion for deduction of tax (if tax were deductible) arose there and moreover the duties were performed in various sectors of the North Sea outside United Kingdom territorial waters. And in support of the merits of those contentions

A it was suggested the task of deducting the appropriate amount of tax from each employee's pay would be very difficult, if not impossible.

(13) The Crown contended, first, that Oceanic was obliged to deduct tax from all payments which came within the charge to tax under Schedule E; and, alternatively, that tax was deductible in all cases where payment was made within the United Kingdom in respect of duties performed in the United B Kingdom sector of the North Sea.

(14) On the first contention it was argued that s 204 on its plain words, required tax to be deducted from any payment within the charge to Schedule E tax and that charge was not limited to United Kingdom residents: in particular it applied where duties were performed in the United Kingdom and s 38 of the Finance Act 1973 extended that to duties performed on the continental shelf in C the United Kingdom sector. There was no reason why these machinery provisions should not apply to Oceanic which was within the jurisdiction of the British courts in that it had a place of business here.

(15) On the Crown's second contention it was argued that payment of wages was made when the method selected by the employee was effectively completed: that is to say when the cheque reached the employee's bank, or D perhaps when the employee's bank account was credited with the amount of the payment. In a number of cases payment was thus made in the United Kingdom and the provisions of s 204 must at least, apply to those cases. Too much should not be made of the practical difficulties. Oceanic was already supplying much of the information necessary to enable the PAYE machinery to be operated; see sub-para (10) above.

E Conclusion

(16) We find nothing in the relevant statutory provisions to displace the general presumption as to the territorial extent of United Kingdom legislation which is explained in the cases cited to us, such as Ex parte Blain (1879) 12 Ch D 522 at page 531 where Cotten L.J. said:

> "I take it the limitation is this, that all laws of the English Parliament F must be territorial—territorial in this sense, that they apply to and bind all subjects of the Crown who come within the fair interpretation of them and also all aliens who come to this country and who, during the time they are here, do any act which, on a fair interpretation of the statute as regards them, comes within its provisions."

It seems to us that although, consistently with that principle, Parliament could G impose a charge to tax under Schedule E on wages received abroad by a British subject from a foreign employer for work done wholly outside this country the employer would not be required to deduct tax under the provisions of s 204 as they now stand. The question which we have to consider is whether the present case is in fact extra-territorial to that extent or whether there are, as the Crown contends, factors which connect the transaction with this country sufficiently H to bring it within the ambit of s 204.

(17) The first factor suggested by the Crown is that Oceanic maintains places of business in this country and is therefore within the jurisdiction of the courts. This in itself, however, seems to us insufficient to bring the case within the territorial principle so long as Oceanic is admitted to be non-resident in the

United Kingdom for tax purposes and provided that no relevant act is done in this country.

(18) The Crown next argues that the matter is affected by s 38(6) of the Finance Act 1973 since that subsection requires us to assume that the employees' duties were performed in the United Kingdom. We note, however, a marked contrast between the terms of s 38(6) and those of s 38(1) which deem the territorial sea to be part of the United Kingdom for all purposes of income tax, capital gains tax and corporation tax. The more limited provisions of s 38(6) are apt to determine the basis of the employees' liability under Schedule E. The continental shelf is not, however, deemed to be part of the United Kingdom and we are unable to treat this as a case of employment within the United Kingdom when applying the territorial presumption to the scope of s 204.

(19) That being so we do not have to answer the question which was posed in argument, whether s 204 would apply where a foreign employer paid wages abroad for work carried out in this country.

(20) Finally the Crown argues that the wages are paid when the cheque reaches the employee's bank (or possibly at the later stage when his account is credited with funds from Oceanic's bank in New York). In either event payment would in a number of instances have been made on that basis, in the United Kingdom. We agree that this would be a highly relevant factor if it could be established; but we do not think that it can. As we understand the law the question where and when payment is made under a contract depends on the circumstances. We find assistance on this point from the recent decision of the Court of Appeal in *Beevers & Another* v. *Mason*[1] reported in The Times newspaper of 19 July 1978. It was there held that payment of rent was made when the cheque was put in the post for despatch to the landlord's agents, that being the accepted procedure in the case of the tenancy in question. So here we think that under the arrangements contained in their contracts of employment the employees accepted that payment would be effected by Oceanic posting cheques to the destination of the employee's choice, apart from the pocket-money cheques which were delivered to the barges. Payment was accordingly made in Brussels and no part of the transaction was effected in the United Kingdom.

(21) We should not have been deterred from accepting the Crown's contentions by consideration of the practical difficulties which were urged on us by the company: the evidence fell far short of showing that deduction of tax would have been impracticable. However, for the reasons given above we hold that s 204 does not apply to the circumstances of this case. We allow the appeal and quash the determination.

9. The Appellant, immediately after the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law and on 29 August 1978 required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act 1970, s 56, which Case we have stated and do sign accordingly.

10. The question of law for the opinion of the Court is whether, on the facts found, our decision is correct in law.

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[1] (1978) 37 P & CR 452.

A 

R.H. Widdows } Commissioners for the Special Purposes
B. James } of the Income Tax Acts

Turnstile House
94–99 High Holborn
B London WC1V 6LQ
16 May 1979

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The case was heard in the Chancery Division before Dillon J. on 21 and 22 July 1980 when judgment was reserved. On 29 July 1980 judgment was given in favour of the Crown with costs.

C *P.V. Baker Q.C.* and *Peter Gibson* for the Crown.

*F. Heyworth Talbot Q.C.* and *J.R. Gardiner* for the Company.

The following cases were cited in argument in addition to those referred to in the judgment:—*Stokes* v. *Bennett* 34 TC 337; [1953] Ch 566; In re *Debtors* [1936] Ch 622; *Westminster Bank Executor and Trustee Co.* (*Channel Islands*) *Ltd.* v. *National Bank of Greece S.A.* 46 TC 472; [1971] AC 945; In re *Dulles*
D *Settlement* [1951] Ch 265; *Theophile* v. *Solicitor-General* [1950] AC 186; *Colquhoun* v. *Brooks* 2 TC 490; 14 App Cas 493; *Commissioners of Inland Revenue* v. *Countess of Kenmare* 37 TC 383; [1958] AC 267.

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**Dillon J.**—This is an appeal by the Crown against a decision of the Special Commissioners. The Special Commissioners held that the Respondent,
E Oceanic Contractors Incorporated, which is a foreign company, is not liable to operate the PAYE procedures of tax collection in respect of the wages of its employees engaged in exploration or exploitation activities in the United Kingdom sector of the North Sea.

The facts are fully set out in the Case Stated, but can be shortly summarised as follows: (1) Oceanic is a company incorporated in Panama
F which is a wholly-owned subsidiary of an American company whose principal place of business is in Louisiana and whose common stock is listed on the New York Stock Exchange. (2) Oceanic is not resident for tax purposes in the United Kingdom. It does indeed have a design office at Wembley in Middlesex, a platform fabrication yard near Inverness and a branch in Aberdeen, but I am not concerned with its employees in these premises. It
G operates the PAYE system in respect of those employees. (3) Oceanic's activities, however, which extend throughout the world, include a North Sea Division whose headquarters are in Brussels and which is engaged in the installation and maintenance of platforms and the laying of pipelines thereto in both the United Kingdom and the Norwegian sectors of the North Sea. The operating base of the North Sea Division is at Antwerp, which was selected for
H its practical suitability as a port. Oceanic has derrick barges, pipe-laying barges and other vessels which work out of Antwerp for a six months operational season in the North Sea in each year. In the winter these vessels return to Antwerp for maintenance. Maintenance workers, who continue to maintain the vessels throughout the winter, have twelve-month contracts, but the construction workers who put together and lay the pipelines are normally
I engaged for a season of 180 days only. (4) Approximately 60 per cent. of those employed by the North Sea Division are United Kingdom nationals. The remainder are citizens of other countries, principally the United States of

America. There was evidence before the Special Commissioners that since 1973 40 per cent. of Oceanic's activity has been in the United Kingdom sector of the North Sea as opposed to other sectors. (5) A form of service contract for employees of the North Sea Division is annexed to the Case. The particular contract annexed is with a United States national. The only relevant difference in the case of employees of other nationalities is indicated in the Case. The wording of the service contract indicates, in my view, that it is intended to be governed by United States law, and there is nothing to suggest that it is governed by English or Scottish law. The contract provides for the employee to be paid in United States currency by any two selected by the employee of the following methods: that is to say, (*a*) deposit of a cheque in a bank designated by the employee; (*b*) payment of a cheque to any person designated by the employee; and (*c*) payment of a cheque direct to the employee. In practice, cheques under (*a*) and (*b*) are posted by Oceanic from Brussels to the banks or designated persons concerned, whether in England or elsewhere. Cheques under (*c*) are, while the employee is engaged in operations in the North Sea, delivered to him in his barge or vessel; he can then cash the cheque on board for dollars and spend them for his day-to-day requirements.

What I have referred to as the United Kingdom sector of the North Sea is not part of the United Kingdom. By international treaty the United Kingdom became entitled to exercise rights outside territorial waters with respect to the seabed and subsoil and their natural resources and by s 1 of the Continental Shelf Act 1964 these rights were vested in the Crown (save in relation to coal, with which I am not concerned). The scheme of the 1964 Act provided for areas to be designated as designated areas within which the rights were to be exerciseable under licences from the Crown. It follows as a practical matter that the activities of Oceanic's North Sea Division are carried on in these designated areas in so far as they are carried on in the United Kingdom sector, rather than the Norwegian or any other national sector of the North Sea.

So far as taxation is concerned s 38 of the Finance Act 1973 provides as follows. Subsection (1): "The territorial sea of the United Kingdom shall for all purposes of income tax, capital gains tax and corporation tax (including the following provisions of this section) be deemed to be part of the United Kingdom." Subsection (2):

> "... 'exploration or exploitation activities' means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area; and ... 'designated area' means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964."

Subsection (3):

> "Any profits or gains from exploration or exploitation activities carried on in a designated area or from exploration or exploitation rights shall be treated for the purposes of income tax or corporation tax as profits or gains from activities or property in the United Kingdom; and any gains accruing on the disposal of such rights shall be treated for the purposes of the Capital Gains Tax Act 1979 as gains accruing on the disposal of assets situated in the United Kingdom."

Subsection (4):

> "Any profits or gains arising to any person not resident in the United Kingdom from exploration or exploitation activities carried on in the

> A United Kingdom or in a designated area ... shall, for the purposes of corporation tax or capital gains tax, be treated as profits or gains of a trade ... carried on by that person in the United Kingdom through a branch or agency."

Subsection (6):

> "Any emoluments from an office or employment in respect of duties B performed in a designated area in connection with exploration or exploitation activities shall be treated for the purposes of income tax as emoluments in respect of duties performed in the United Kingdom."

It is not in dispute that, as a result of this section, Oceanic is liable to United Kingdom tax in respect of its profits from the activities of its North Sea Division in the designated areas, and Oceanic's employees, whether British C subjects or not and whether resident or ordinarily resident in the United Kingdom or not, are liable to United Kingdom income tax under Schedule E in respect of their pay for their duties performed in a designated area.

Before I turn to the machinery for the collection by the PAYE system of tax under Schedule E I should indicate the scope of Schedule E. This is set out in s 181 of the Income and Corporation Taxes Act 1970. That section provides D that tax under Schedule E "shall be charged in respect of any office or employment on emoluments therefrom which fall under one, or more than one, of the following" three Cases. Case I, in its present form, reads as follows:

> "Case I: where the person holding the office or employment is resident and ordinarily resident in the United Kingdom, any emoluments E for the chargeable period, [subject, however, to the deduction or exception provided for in Schedule 2 to the Finance Act 1974 if the emoluments are foreign emoluments and to the deduction provided for in Schedule 7 to the Finance Act 1977 if in the chargeable period he performs the duties of the office or employment wholly or partly outside the United Kingdom]...."

F In the original form of s 181, Case I was worded somewhat differently and related to the position where the person holding the office or employment was resident and ordinarily resident in the United Kingdom and did not perform the duties of the office or employment wholly outside the United Kingdom. Case II applies where the person concerned "is not resident or, if resident then not ordinarily resident in the United Kingdom"; and the emoluments then are G "any emoluments for the chargeable period in respect of duties performed in the United Kingdom". Case III did not figure in the argument and so it is not necessary for me to read it. It is concerned, however, particularly with emoluments received in the United Kingdom.

The PAYE system is a scheme for the collection of tax under Schedule E. The essence of the scheme is that the burden is thrown on to the employer to H collect the tax for the Crown by deduction from the employees' wages or salaries. Mr. Talbot has stressed that Schedule E tax existed and was collected before the PAYE system was introduced, but I do not derive any assistance from this. I do not doubt that the PAYE system is administratively convenient for the Crown and leads to the prompt collection of very much more tax under Schedule E than would otherwise be collectible. The legislative authority for the operation of the PAYE system is s 204 of the Income and Corporation Taxes Act 1970. Subsection (1) reads as follows:

> "On the making of any payment of, or on account of, any income assessable to income tax under Schedule E, income tax shall, subject to and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the income and notwithstanding that the income is in whole or in part income for some year of assessment other than the year during which the payment is made."

There is then provision for regulations to provide the machinery, and these regulations are to have effect notwithstanding anything in the Income Tax Acts.

The primary question in this appeal is as to how far s 204 is applicable in a case with a foreign element. Mr. Talbot, for Oceanic, takes his stand on the principles stated in ex parte *Blain* (1879) 12 ChD 522, where, at page 526, James L.J. speaks of

> "the broad, general, universal principle that English legislation, unless the contrary is expressly enacted or so plainly implied as to make it the duty of an English Court to give effect to an English statute, is applicable only to English subjects or to foreigners who by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction."

In the same case, Cotton L.J. said, at pages 531–2:

> "I take it the limitation is this, that all laws of the English Parliament must be territorial—territorial in this sense, that they apply to and bind all subjects of the Crown who come within the fair interpretation of them, and also all aliens who come to this country and who, during the time they are here, do any act which, on a fair interpretation of the statute as regards them, comes within its provisions."

Ex parte *Blain* was concerned with bankruptcy law, but the principles which I have cited were stated by Fry L.J. in Re *Pearson* (1892) 2 QB 263, at page 268, to be of general application, and they were in fact applied to the construction of a taxing Act in *Colquhoun* v. *Heddon*[1] 2 TC 621. Therefore, says Mr. Talbot, s 204 does not apply to these North Sea activities of Oceanic.

For the Crown, Mr. Baker's primary argument was that the wide, general words of s 204 are to be given their full natural meaning and the only territorial limitation is that provided by the scope of Schedule E itself. Thus, under Case II of Schedule E a person who is not resident and not ordinarily resident in the United Kingdom is only liable to tax under Schedule E on his emoluments in respect of duties performed in the United Kingdom. Accordingly, a French employer, for instance, would not be required to operate the PAYE system in respect of wages paid to his French employees in France for their services in France because such wages are not subject to Schedule E tax. Mr. Baker points to *Whitney* v. *Commissioners of Inland Revenue*[2] [1926] AC 37, where, although ex parte *Blain* and *Colquhoun* v. *Heddon* were cited, the House of Lords held, affirming the Court of Appeal, that the term "any individual" in

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(1) (1890) 25 QBD 129. (2) 10 TC 88.

the section of the Income Tax Act 1918 which imposed super tax included a foreign national domiciled and resident abroad, who was thus liable to super tax on his income from property in the United Kingdom although not (because it was outside Schedule D and so not part of his total income for tax purposes) on income from property outside the United Kingdom. The difficulty about this wide construction of s 204 is that it would mean that a foreign employer who employed abroad a person who was resident and ordinarily resident in the United Kingdom—for instance, if a young man, to gain experience, took employment for some months with an American bank in New York, or a British engineer worked for some months on a project in an Arab state—the foreign employer would be under a statutory duty to operate the PAYE scheme in respect of the employee's emoluments and to account to the Crown here for United Kingdom tax payable by the employee under Case I of Schedule E. Slightly less stark difficulties would have arisen under Case I in its original form, and there could also be problems of applying PAYE to a foreign employer in respect of emoluments falling within Case III. I cannot conceive that it was the intention of Parliament to throw such liabilities on to foreign employers in respect of businesses not in any sense carried on within the United Kingdom or connected with the United Kingdom. I cannot believe that it is a correct construction of s 204 that it should extend to foreign employers in such circumstances.

By contrast, as one of the ways of putting Oceanic's case, Mr. Talbot drew my attention to Lord Denning's reference in *Draper & Son Ltd.* v. *Edward Turner & Son Ltd.* [1965] 1 QB 424, at page 432B, to "the general rule that an Act of Parliament only applies to transactions within the United Kingdom and not to transactions outside". He submitted that the relevant transaction for the purposes of s 204 was the making of a payment of income and that the payments were made in Brussels where the cheques were posted, and where any deduction from emoluments would be effected.

In *Rhokana Corporation Ltd.* v. *Commissioners of Inland Revenue*[1] [1938] AC 380, at page 399, Lord Maugham referred to the well-known common law rule that where a cheque is sent in payment of a debt the date of payment, if the cheque is duly met, is the date when the cheque was posted. The decision of the Court of Appeal in *Beevers* v. *Mason* (1978) 37 P and CR 452 is to the same effect. If the payment is made at the time when the cheque is posted, it seems to me that it must follow that the payment is made in the country where the cheque is posted and not in a country which the cheque did not reach until a later date. I do not see any significant distinction between alternative (*a*) in the service agreement, the deposit of a cheque in a bank designated by the employee, and alternative (*b*) the payment of a cheque direct to any person designated by the employee. In either case what was envisaged and done was that the cheque was sent by post from the administrative headquarters of the North Sea Division in Brussels to the bank or person concerned. Deposit merely indicates that the cheque was to be sent to the bank for the account of the employee, rather than for the bank's own benefit.

I therefore agree with Mr. Talbot that the payments by cheque made by Oceanic under alternatives (*a*) and (*b*) are to be regarded as made in Brussels and not in the United Kingdom. But that does not, in my judgment, solve the problem. Lord Denning in *Draper* v. *Turner* was not laying down a new rule. He was merely stating, in the wording which he considered appropriate to the

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[1] 21 TC 552, at p 585.

case before him, the well-established rule which had been enunciated in such A
cases as ex parte *Blain*(1) and *Colquhoun* v. *Heddon*(2). That, however, is
merely a rule of construction and not a rule of law. In other words, it is merely
a factor to be taken into account to a greater or lesser extent, and in whatever
way may in the circumstances be appropriate, when the Court has to construe
apparently general wording in a statute of the United Kingdom Parliament. It
is the statute which has to be construed, and the rule, such as it is, is merely an B
aid to reaching the right construction of the statute. In fact, the decision of the
Court of Appeal in *Draper* v. *Turner*(3) was overruled by the House of Lords
in *Hardwick Game Farm* v. *Suffolk Agricultural Poultry Producers Association*
[1969] 2 AC 31 and a different construction of the relevant statute was
adopted by a majority of the House. The test which had been adopted by the
Court of Appeal in *Draper's case* was regarded by Lord Pearce in the C
*Hardwick case*, at page 120D, as "too whimsical a test". It seems to me that
much the same comment is warranted by Mr. Talbot's suggestion that whether
s 204 is to be applied depends solely on whether the payment of the relevant
emolument is technically made in the United Kingdom or overseas by despatch
to the United Kingdom. If Mr. Talbot were right, the PAYE system would not
have to be operated by a foreign employer who ran a factory in England if he D
paid his employees by posting their cheques to them from abroad, but might
have to be operated if he paid them by bank telegraphic transfer or telex from
abroad. It seems to me that s 204 must apply where the duties of the office or
employment are carried out within the United Kingdom, whether the employer
is foreign or not and whatever method be adopted for paying the emoluments
for those duties. An employer who comes to this country and carries on a E
business here must comply with domestic tax law requirements such as s 204.

Now the designated areas in the United Kingdom sector of the North Sea
are not part of the United Kingdom. They are, however, not part of the
territory of any other State, either. The distinction is drawn in s 38 of the
Finance Act 1973. Subsection (1) provides that the territorial sea of the United
Kingdom is to be deemed to be part of the United Kingdom, but this F
subsection does not refer to the designated areas. Subsection (4) refers to
activities carried on "in the United Kingdom or in a designated area".
Subsections (4) and (6) of s 38 are consistent in treating exploration or
exploitation activities in a designated area as being a trade carried on in the
United Kingdom and in treating emoluments in respect of duties performed in
a designated area in connection with exploration or exploitation activities as G
emoluments in respect of duties performed in the United Kingdom. It was in
my judgment competent to the United Kingdom Parliament to enact such
provisions. The rights which the Crown has in the seabed and subsoil and their
natural resources provide an ample link between these designated areas and the
jurisdiction of the Parliament of the United Kingdom, and I can accordingly
see no reason, on the basis of ex parte *Blain* or otherwise, why s 204 should be H
construed so as not to extend to emoluments in respect of duties performed in
a designated area. This is in no way inconsistent with the Court's approach in
the *Hardwick Game Farm* case. On the contrary, the direction in s 38(6) of the
1973 Act that these emoluments are to be treated for the purposes of income
tax as emoluments in respect of duties performed in the United Kingdom
appears to me to include the purposes of collection, and not merely I
assessment, of income tax, and thus to underline that s 204 does apply to these
emoluments.

(1) [1879] 12 Ch D 522. (2) 2 TC 621. (3) [1965] 1 QB 424.

A I accordingly conclude that the Special Commissioners were wrong in law,
and this appeal should be allowed.

*Appeal allowed, with costs.*

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The company's appeal was heard in the Court of Appeal (Lawton,
Brightman and Fox L.J.) on 7, 8, 9, 12 and 13 October 1981 when judgment
B was reserved. On 10 November 1981 judgment was given unanimously against
the Crown with costs.

*P. Heyworth Talbot Q.C.* and *J.R. Gardiner* for the company.

*Paul Baker Q.C.* and *Robert Carnwath* for the Crown.

The following cases were cited in argument in addition to those referred to
in the judgment:—*Colquhoun* v. *Heddon* 2 TC 621; *Tomalin* v. *S. Pearson &*
C *Son Ltd.* [1909] 2 KB 61; *Attorney-General for Canada* v. *Huggard Assets*
*Ltd.* [1953] AC 420; *CEB Draper & Son Ltd.* v. *Edward Tunnel & Son Ltd.*
[1965] 1 QB 424; *Air-India* v. *Wiggins* [1980] 1 WLR 815; *Hardwick Game*
*Farm* v. *Suffolk Agricultural Poultry Producers Association* [1969] 2 AC 31;
*Rhokana Corporation Ltd.* v. *Inland Revenue Commissioners* [1938] AC 380;
*Beevers* v. *Mason* [1978] *P & CR* 452; *Brokaw* v. *Seatrain UK Ltd.* [1971] 2 QB
D 476; *Theophile* v. *Solicitor General* [1950] AC 186; *Pugh* v. *Pugh* [1951] P 482;
*Stokes* v. *Bennett* 34 TC 337; [1953] Ch 566; *Countess of Kenmare* v. *Inland*
*Revenue Commissioners* 37 TC 383; [1956] Ch 220; *Haggin* v. *Comptoir*
*D'Escompte De Paris* (1889) 23 QB 519.

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**Lawton L.J.**:—Oceanic Contractors Incorporated appealed against an
E order of Dillon J., made on 29 July 1980, whereby he set aside as being
erroneous a determination in their favour by the Special Commissioners for
Income Tax and reversed it. The effect of this order was to adjudge that the
obligations imposed by s 204 of the Income and Corporation Taxes Act 1970,
put upon Oceanic as persons making payments of income assessable to income
tax under Schedule E, the duty to deduct income tax and to account for such
F deductions to the Inland Revenue notwithstanding, first, that they were
incorporated under the laws of Panama where they had their registered office;
secondly, that they were a wholly owned subsidiary of a company incorpo-
rated under the laws of the State of Delaware, USA, which had its principal
place of business in New Orleans, Louisiana; thirdly, that they were not
resident in the United Kingdom for tax purposes; fourthly, that the persons to
G whom they made payments of income assessable to income tax under Schedule
E were employed by them under contracts governed by the law of the State of
Louisiana, to do work in the North Sea outside the territorial waters of the
United Kingdom but within the areas of that sea designated by the United
Kingdom pursuant to the Convention on the High Seas 1958 and the
Continental Shelf Act 1964 as areas within which the rights of the United
H Kingdom with respect to the sea bed and subsoil and their natural resources
may be exercised; and lastly, that they made the payments in Belgium in US
dollars by cheques drawn on Oceanic's bank account in New York without
deducting tax.

The Case stated by the Special Commissioners sets out the agreed facts.
Dillon J. gave a summary of them in his judgment which is reported in [1981] 1

WLR 59([1]). In these circumstances I need not for the purposes of this judgment go over the facts again. It suffices, I think, to state that the Crown's claim was for the tax which they claimed Oceanic should have deducted during the tax year 1977–78. The Inland Revenue's calculations were that £2,033,254 was payable under regn 26 of the Income Tax (Employments) Regulations 1973 (to which I shall refer hereafter as "the Regulations"). During the relevant tax year Oceanic had premises in the United Kingdom and employed here about 4,500 persons in a number of places. They deducted tax in sterling under the PAYE scheme when paying them. This appeal is not concerned with those employees. What it is concerned with is the payments of income to a few hundred men, about 60 per cent. of the work force, who worked for Oceanic on derrick barges, pipe-laying barges and other vessels in both the United Kingdom and Norwegian sectors of the North Sea. The operating base for this work was Antwerp and the administrative base was Brussels where the pay records were kept and cheques for emoluments were drawn and posted. Most of those who were assessable to tax under Schedule E had addresses in the United Kingdom. Oceanic posted cheques to those addresses.

The Crown's main submission was bold, startling and clear. It came to this: anyone, whatever his nationality and wherever he may be, who makes a payment of income to a person assessable to income tax under Schedule E has a duty to deduct income tax and, I quote from regn 26(1), "within 14 days of the end of every income tax month [he] shall pay to the Collector all amounts of tax which he was liable ... to deduct from emoluments paid by him during that income tax month". If this be right, some odd and not uncommon situations would arise. I refer to three. An English craftsman in the building trade goes to an EEC country for a few months to do work for a foreign employer on a building site there. A Commonwealth or foreign newspaper employs one of its own nationals to act as its correspondent in London. A foreign government employs a British scientist or engineer on a short term contract at a salary to give advice or supervise some undertaking. In these kinds of situations the payment of emoluments would probably be made outside the United Kingdom and in the local currency. In all three cases, according to Mr. Baker for the Crown, the foreign employers should deduct tax, presumably in the currency in which the emoluments were paid, and account to the Collector. In some circumstances the employer would be bound to make repayments of tax, again presumably in the same currency as he had deducted tax. He could not be expected to make repayments in sterling. Further, he would be bound to keep the records, give the certificates and make the returns prescribed in the Regulations and to produce at his premises to authorised officers of the Commissioners of Inland Revenue, if called upon to do so, wages sheets, deduction cards and other documents relating to the calculations or payment of emoluments to his employees: see parts 3 and 4 of the Regulations. If he fails to perform his duties under the Regulations he may become liable to penalties under s 98(1)(*b*) of the Taxes Management Act 1970. Mr. Baker accepted that it would often be impracticable to enforce the PAYE scheme when there were foreign employers. He submitted, however, that Parliament had envisaged this possibility by providing in s 205(2) that assessments can be made on a person in respect of his income assessable under Schedule E. This point was part of his main submission that s 204 applies to persons making payments outside the United Kingdom of income assessable to income tax under Schedule E and that this was so notwithstanding the well established canon of construction for statutes that they do not apply outside the United Kingdom unless Parliament has enacted expressly or by necessary

([1]) Page 195 *ante*.

A implication that they should. See Ex parte Blain (1879) 12 Ch D522. Mr. Baker's argument was based, not on any express provision, because there was none, but on necessary implication. Section 204, he submitted, is complementary to s 181 which sets out when tax is chargeable in respect of any office or employment on emoluments therefrom. It envisages tax being chargeable on foreign emoluments paid to a person resident and ordinarily resident in the
B United Kingdom (Case 1) and on emoluments in respect of duties performed in the United Kingdom by a person not resident or, if resident, not ordinarily resident in the United Kingdom (Case 2). Tax chargeable on emoluments paid abroad or paid in the United Kingdom by persons not ordinarily resident here has to be collected if it is practical to do so. Since there is an extra-territorial element in the charging section, there must be a similar element in the
C collecting section, which is s 204. If there were not, there would be a gap in the PAYE scheme which could lead to widespread avoidance of tax. Mr. Carnwath, who followed Mr. Baker for the Crown, pointed out that s 204(2) provided that the Board of Inland Revenue "shall make regulations with respect to the ... collection and recovery of income tax in respect of *all* income assessable ... under Schedule E". Parliament must have intended the
D Regulations to apply to foreign emoluments under Case 1 of Schedule E. The statutory provisions for assessing and collecting tax if it were impractical to apply the PAYE scheme went to support the Crown's submission that Parliament intended s 204 to apply worldwide; section 205(2) with regn 50 provided a long stop to deal with the cases where it was impracticable to apply the PAYE scheme.

E These submissions did not find favour with Dillon J.: see [1981] 1 WLR 59 at pages 64–65([1]). He had had, as we have had, the benefit of Mr. Heyworth Talbot's submissions on behalf of Oceanic. In the course of them both at first instance and before us he traced through a number of cases the application of the canon of construction enunciated in Ex parte Blain([2]) (*supra*) to taxing statutes. For the purposes of this judgment I do not find it
F necessary to examine them in detail because the basic problem when construing all statutes is to deduce from the words used what Parliament intended to enact. Under s 204 Parliament provided that on the doing of a certain act, namely, on the making of a payment of income assessable to income tax under Schedule E, income tax shall be deducted or repaid by the person making the payment. The performance of this act may be in the United
G Kingdom but it may be anywhere else in the world and by a person who is not ordinarily resident here or who owes no allegiance to the Crown. Before this court the Crown did not contest Oceanic's submission that the act of payment had been made in Belgium by the posting there of cheques drawn on a New York bank and made out in US dollars. Despite the clear intent of Parliament to make foreign emoluments chargeable to tax under Schedule E in certain
H circumstances, can it have been their intention to make foreigners, not resident in the United Kingdom, tax collectors for the Inland Revenue and to impose upon them the onerous duties arising from the Regulations, to say nothing of the obligation under regn 32 to produce to authorised officers of the Commissioners of Inland Revenue at their premises all their wage sheets and the like? Further, Parliament must be presumed to have intended s 204 to be
I "workable and the interpretation of it by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable": see *Whitney* v. *Commissioners of Inland Revenue*([3]) [1926] AC 37 *per* Lord Dunedin at page 52. Putting aside those cases in which the foreign employer does not deduct tax (and most probably would not) so that direct

([1]) Pages 198–9 *ante*. ([2]) (1879) 12 CLD 522. ([3]) 10 TC 88.

assessment has to be made under s 205(2), those who were willing to deduct tax A would have to find answers to a number of administrative and financial problems. They would have to employ wages clerks with a knowledge of English who could understand and apply the Regulations; they would have to decide whether to account to the Collector in their own currency or sterling; there would be problems arising from variations in the values of currencies, particularly between the date of deduction and the date when accounting had B to take place; and if they were resident in countries with exchange control laws they might find it impossible to account to the Collector. In my judgment, Parliament cannot have intended that s 204 should have the worldwide application for which the Crown has contended.

Dillon J., although rejecting the wide construction of s 204 for which the Crown contended, adjudged that the section did apply to emoluments in C respect of duties performed in the designated area of the United Kingdom sector of the North Sea. He reached this conclusion by the following reasoning. Anyone, whether foreigner or not who in the United Kingdom pays emoluments for duties performed there must apply the PAYE scheme even though that person may not be resident in the United Kingdom for tax purposes. Mr. Heyworth Talbot on behalf of Oceanic did not submit D otherwise; and Oceanic have in fact applied the scheme to all their employees whom they pay in the United Kingdom. Although the United Kingdom designated area of the North Sea is not part of our territorial waters, Parliament as it was competent to do has provided by s 38 of the Finance Act 1973, a territorial extension of charges to income tax, capital gains tax and corporation tax. Section 38(3) provided that any profits or gains from E exploration or exploitation activities carried on in a designated area should be treated for the purposes of income tax or corporation tax as profits or gains from activities in the United Kingdom. Section 38(4) provided that any profits or gains arising to any person not resident in the United Kingdom from such exploration or exploitation activities, should for the purposes of corporation tax be treated as profits or gains of a trade carried on by that person in the F United Kingdom through a branch or agency. Section 38(6) was in these terms:

> "Any emoluments from an office or employment in respect of duties performed in a designated area in connection with exploration or exploitation activities shall be treated for the purposes of income tax as emoluments in respect of duties performed in the United Kingdom."

Mr. Baker for the Crown submitted in this court, and I assume that he put G forward the same argument before Dillon J., that the words "for the purposes of income tax" were wide enough to include both charging and collecting tax. The learned Judge was of the same opinion. This led him to conclude his judgment with these words(1):

> "The direction in section 38(6) of the Act of 1973 that these emoluments are to be treated for the purposes of income tax as H emoluments in respect of duties performed in the United Kingdom, appears to me to include the purposes of collection, and not merely assessment, of income tax, and thus to underline that section 204 does apply to these emoluments."

I too accept that the words "for the purposes of income tax" are wide enough to include both charging and collecting tax. Section 38(6) is primarily, I however, a charging provision. Persons coming within its ambit can be

(1) [1981] WLR 59, at p 66; page 200 *ante*.

A assessed directly for income tax and after assessment they, not their employers, will have to settle with the Collector. In my judgment, s 38(6) cannot be construed as having any effect upon any person other than the person to whom the emoluments are paid, provided always, of course, that he is chargeable to tax under Schedule E. It does not purport to impose any obligation on persons, not resident in the United Kingdom for tax purposes,
B who do acts outside the United Kingdom which, if done within the United Kingdom, would create a duty to deduct tax and account for it to the Collector. Both the constructions contended for on behalf of Oceanic and the Crown and that adopted by Dillon J. require words to be read into s 204 which the court should not do save in exceptional circumstances. The words which Oceanic submit should be read into s 204 are derived, as Mr. Gardiner, who
C followed Mr. Heyworth Talbot, pointed out, from the application to that section of a canon of construction which has been used for a very long time, whereas Dillon J.'s construction requires words which will link s 204 to s 38(6) of the Finance Act 1973, by providing that a payment wherever made in respect of duties performed in the United Kingdom or a designated area thereof shall impose tax liabilities on non-residents. Such linking should be
D done by Parliament, not by the courts. I am unable to accept the learned Judge's construction.

Mr. Baker's final submission on behalf of the Crown was that s 204 applied to any person who had a presence in the United Kingdom even though not resident here for tax purposes. He pointed out that Oceanic has established a place of business within Great Britain and has complied with the
E requirements of s 407 of the Companies Act 1948. This, he submitted, was enough for the purposes of s 204. This, in my judgment, is not enough. As Mr. Heyworth Talbot pointed out, our income tax law is based on the taxation of gains or profits arising in the United Kingdom or made by persons resident here. I would allow the appeal and restore the determination of the Special Commissioners.

F **Brightman L.J.:**—The question for decision is whether Oceanic, which is a foreign company not resident in the UK, is required by law to operate the PAYE procedures of tax collection in respect of the wages of its employees who are paid and employed outside the UK; that is to say, who are engaged on the installation and maintenance of platforms and the laying of pipe-lines wholly or partly in the UK sector of the North Sea. Such employees belong to
G Oceanic's North Sea Division. In the period with which we are concerned the majority of such employees were British subjects. The remainder were principally citizens of the United States. Some were resident within the United Kingdom and others were not. They were paid in US dollars by cheques made out in Brussels, the seat of administration of the North Sea Division, and drawn on Oceanic's New York Bank. Under the terms of his contract an
H employee might be paid, at his option, by deposit in his banking account, by payment to his nominee (e.g. his wife) or by payment direct to the employee. During the course of his work an employee may be engaged in the laying of a pipe-line which crosses from one national sector of the North Sea to another national sector, so that during a given period he may be employed part time in the British sector and part time, for example, in the Norwegian sector.

I The Continental Shelf Act 1964 enables an area within the United Kingdom sector to be "designated" by Order in Council as an area within which any rights outside UK territorial waters with respect to the sea bed and subsoil and their natural resources are exercisable by the UK. Such a designated area by definition is not part of the UK but under s 38(6) of the

Finance Act 1973, any emoluments from employment in respect of duties A performed there in connection with exploration or exploitation activities are to be treated "for the purposes of income tax" as emoluments in respect of duties performed in the UK; "exploration or exploitation activities" being defined as activities carried on in connection with the exploration or exploitation of so much of the sea bed and subsoil and their natural resources as is situated in the UK or a designated area. Both the Continental Shelf Act 1964 and the Finance B Act 1973, contain a clear recognition of the fact that a designated area is not a part of the United Kingdom. In particular, s 38(6) of the Finance Act 1973, does not "deem" a designated area to be a part of the UK for income tax purposes. All that it does is to provide that any emoluments from an employment in respect of certain duties performed therein shall be treated for income tax purposes as emoluments in respect of duties performed in the UK; C just as a future Act of Parliament might so treat emoluments from employment in respect of duties performed on the moon, without deeming the moon to be part of the UK for tax purposes.

An office holder or employee, whether resident in the UK or abroad, is taxed under Schedule E. There are three cases under which his emoluments attract tax. The effect of s 181 of the Income and Corporation Taxes Act 1970, D read with s 38(6) of the Finance Act 1973, is that an employee of Oceanic's North Sea Division receiving emoluments for employment in respect of duties performed in a designated area in connection with exploration or exploitation activities (as defined) will be liable to Schedule E tax whether or not he is a British subject, whether or not he is resident in the UK and whether or not his emoluments are paid in the UK, subject to certain deductions and exceptions E under the Finance Acts 1974 and 1977, in respect of foreign emoluments and duties performed abroad.

The liability of the North Sea Division employees to Schedule E tax is clearly subject to individual complications arising out of his personal status (resident or not resident) and possible movements across the frontiers of different national sectors. The problem relates solely to the collection of that F tax at source. Section 204 imposes on the salary or wage payer the obligation to act as tax collector. "On the making of any payment" of income assessable to income tax under Schedule E, income tax "subject to and in accordance with regulations made by the Board under this section" is to be "deducted or repaid" by the salary or wage payer.

The current regulations are the Income Tax (Employments) Regulations G 1973. They superseded the 1965 Regulations and operated from 6 April 1973. Under Regn 13(2) and (3) the employer (defined as any person paying emoluments) "on the occasion of any payment of emoluments" either deducts or repays tax according to whether the employee's current cumulative tax liability exceeds or falls below his previous cumulative tax liability. Under Regn 24, if the employee receives no emoluments on his usual pay day owing H to sickness, the employer must make such repayment of tax as may be appropriate on application being made by the employee in person or by his agent; or if the employee's absence from work is due to other causes, the employer must either make a repayment of tax to the employee or give notice and render certain returns to the Tax Inspector. Under Regn 26 the employer must account to the Collector of Taxes each month for the excess of I deductions over repayments, and the Commissioners of Inland Revenue must reimburse the employer if repayments exceed deductions. Regulation 32 imposes a duty on an employer, whenever called upon to do so by an authorised officer of the Commissioners of Inland Revenue, to produce all

A wages sheets and other documents and records whatsoever relating to the calculation or payment of the emoluments of his employees, or such as may be specified by the authorised officer, and such production is to be made "at the employer's premises". The regulations I have mentioned fall clearly within the scope of the particular provisions which Parliament, by s 204(2), required the Commissioners of Inland Revenue to cover by regulations. The question,
B therefore, is whether a foreign employer, resident abroad, paying emoluments in foreign currency outside the UK to an employee in respect of duties performed outside the UK, is required to operate the PAYE procedures on behalf of the Collector of Taxes and the Commissioners of Inland Revenue notwithstanding that payer and payee are abroad, the payment is made abroad and the emoluments are earned abroad. Is s 204 intended by Parliament to be
C construed so as to impose, for example, on a Hollywood film producer who engages for a film set in Hollywood a cameraman who happens to be an English resident, the duty under English law to deduct Schedule E tax and to account for it to the Collector of Taxes? And the duty, when occasion arises, to make to the cameraman a repayment of Schedule E tax? And does the film producer have a duty to account to the English Collector of Taxes in sterling or
D in dollars? And does he repay the employee, if the occasion arises, in sterling or in dollars? And do the Commissioners of Inland Revenue make repayment to the film producer, if the occasion arises, in sterling or in dollars? And what is the relevant date for converting one currency into the other if conversion is required? It seems to me inconceivable that Parliament can have intended to cast on such a foreigner the role of tax collector and tax re-imburser in the
E USA on behalf of the English Collector of Taxes. I can well see that a foreign corporation or individual employer, who is resident in the United Kingdom or has a paying agent in the United Kingdom, and employs a person to perform duties in the United Kingdom, and pays such person in the United Kingdom, will be required to operate or to permit his paying agent to operate the PAYE system of deduction and repayment. And it may well be that the net is cast
F wider than that. But Oceanic is not so resident, and has no such resident paying agent in respect of the employees with whom we are concerned, and such employees do not perform duties in the UK.

I recognise that s 204 of the 1970 Act, is general in its terms. Oceanic has made payments of income assessable to income tax under Schedule E. Therefore in general terms s 204 applies to Oceanic. But such a simplistic
G construction flies in the face of the principle, laid down notably in Ex parte Blain (1879) 12 Ch D522 and echoed in numerous later cases, that "English legislation is primarily territorial"; "a broad substantial rule" which Lord Halsbury said in *Cooke* v. *Charles A. Vogeler Co.* [1901] AC 102 at page 107 he "should be sorry to see departed from". The leading judgment in *Blain* was that of James L.J. He referred to the broad, general, universal principle that
H English legislation, unless the contrary is expressly enacted or plain beyond a peradventure, is applicable only to British subjects or to foreigners who, by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction. "But if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English legislature could have ever intended to
I make such a man subject to particular English legislation". Each enactment must be considered on its merits; I can well imagine that the English legislature did intend to make a paying agent resident in this country liable to deduct tax from the emoluments of a person working in this country, notwithstanding that his principal is resident abroad; e.g. if Oceanic arranges for the payment by its agent in this country of its staff employed at Wembley. The paying agent

is "the person making the payment" and so he falls within s 204. Brett L.J. A
used almost the same formulation as Lord Halsbury later used when he said that([1]) "the governing principle is that all legislation is *prima facie* territorial", as also Cotton L.J.([2]),

> ".... all laws of the English Parliament must be territorial—territorial in this sense, that they apply to and bind all subjects of the Crown who come within the fair interpretation of them, and also all aliens B
> who come to this country, and who, during the time they are here, do any act which, on a fair interpretation of the statute as regards them, comes within its provisions... If he is resident here temporarily, and does an act which comes within the intent and purview of a statute, he, as regards that statute, as does every alien who comes here in regard to all the laws of this realm, submits himself to the law, and must be dealt with accordingly. As C
> regards an Englishman, a subject of the British Crown, it is not necessary that he should be here, if he has done that which the Act of Parliament says shall give jurisdiction, because he is bound by the Act by reason of his being a British subject, though, of course, in the case of a British subject not resident here, it may be a question on the construction of the Act of Parliament whether that which, if he had been resident here, would D
> have brought him within the Act, has that effect when he is not resident here."

The qualification is important. I would not be prepared to assume that the film producer, who figures in the illustration I gave earlier, would be liable to act as tax collector merely because he was a British subject. He may not come within s 204 on a "fair interpretation" of its terms. So in the present case it might or E
might not make any difference if Oceanic was a company registered or resident in this country, or was an individual with British nationality. That is not this case and I express no view. The only view which I do venture to express *obiter* is that a paying agent resident in this country of a foreign corporation is a "person making the payment" within the intent and scope of s 204 when he makes payments to the employees of his foreign principal. F

I therefore would reject the argument of the Crown for a worldwide application of s 204 to all cases of payment of emoluments in respect of which the recipient can be taxed under Schedule E. I would also reject the subsidiary submission of the Crown that Oceanic is within the scope of s 204 because it has what was called in argument a "presence" in this country, i.e. because process can be served upon it. Such a submission would mean that a foreign G
individual employer renders himself liable to the duties imposed by s 204 during the period, for example, that he spends a fortnight's holiday in Devon. I cannot think it was the intention of Parliament that his mere presence in the UK, though enabling process to be served upon him, should bring him within the scope of s 204. The learned Judge found in favour of the Crown on the basis that "the rights which the Crown has in the sea bed and subsoil and their H
natural resources provide an ample link between these designated areas and the jurisdiction of the Parliament of the United Kingdom" and therefore he could see no reason why s 204 should be construed so as not to extend to emoluments in respect of duties performed in a designated area. He considered that the case should be dealt with in exactly the same way as if Oceanic, a foreign resident company, were making payments abroad to employees working in the United I
Kingdom. I reserve my opinion whether Oceanic would in fact be within s 204 merely because the duties were performed in the UK. That question does not

([1]) (1879) 12 Ch D522, at p 528. ([2]) *Ibid*, at pp 531–2.

arise on the stated case. I am unable to accept the Judge's view that the existence of Crown rights over the sea bed and subsoil of extra-territorial waters, and in their natural resources, provides a "link between these designated areas and the jurisdiction of the Parliament of the United Kingdom" so as to justify so construing s 204 as to impose its burden on all who employ persons on exploration or exploitation activities therein.

Counsel for Oceanic based his case on the proposition that s 204 is confined to cases in which the salary or wages payer is a British subject or a UK resident, or in which the payer, though a foreign national and resident abroad, makes payment in the UK. It is unnecessary to express a concluded view on this formulation of the s 204 liability. It is sufficient to say that Oceanic is not a UK company, or resident in the UK and does not make payments in this country to the employees of its North Sea Division, without considering whether it would make all the difference if, for example, Oceanic were an individual with British nationality. I would allow the appeal.

**Fox L.J.**:—I agree that the appeal should be allowed for the reasons given by my Lords.

*Appeal allowed, with costs. Leave to appeal to the House of Lords granted.*

The Crown's appeal was heard in the House of Lords (Lords Scarman, Wilberforce, Edmund-Davies, Lowry and Roskill) on 11, 12 and 13 October 1982 when judgment was reserved. On 16 December 1982 judgment was given in favour of the Crown (Lord Edmund-Davies and Lord Lowry dissenting), with costs.

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([1])*D.C. Potter Q.C.* and *Robert Carnwath* for the Crown. It is common ground that Schedule E tax is payable if either the employees are resident in the United Kingdom or their duties are deemed to have been performed in the United Kingdom. The question is whether a non-resident company is liable to make deductions under PAYE. The Crown put their case in two ways. (1) The PAYE liability applies whenever Schedule E tax is chargeable, and s 204 of the Income and Corporation Taxes Act 1970 has no territorial limitation at all (the "universal" or logical approach). Alternatively (2) if Parliament did intend some restriction, the onus is on the respondents to show what it is. They cannot establish that non-residence is such a limitation.

The statutory provisions may be analysed by way of their concern with (1) the tax character of the employer, (2) the imposition of liability for Schedule E income tax, and (3) the tax collection machinery.

Any person resident in the United Kingdom and carrying on trade in the United Kingdom is taxable on all profits wherever they arise anywhere in the world: see ss 108 and 109 of the Act of 1970. If a company is not so resident, s 246 (1) of the Act makes it chargeable to corporation tax on "all its chargeable profits wherever arising", if it carries on trade in the United Kingdom through a branch or agency. By virtue of s 246 (2), the respondents are clearly chargeable to corporation tax on any income arising through their branch or agency in the United Kingdom. Section 38 of the Finance Act 1973 extends the

([1]) Argument reported by M.I. Hawkings, Barrister-at-Law.

charge to income, capital gains and corporation tax to exploration or A
exploitation activities carried on in a designated area. By s 38 (4), profits or
gains from such activities are treated as profits or gains of a trade carried on in
the United Kingdom through a branch or agency. It is therefore reasonable to
assume that in the case of branches carrying on activities in designated areas,
Parliament intended Case I of Schedule D to apply. A company is not
necessarily resident where its operations occur: *De Beers Consolidated Mines* B
*Ltd.* v. *Howe* [1906] AC 455, where it was held that the relevant criterion for
determining residence of a company was where the head, seat and manage-
ment of the company were, *per* Lord Loreburn L.C., at page 458. The case
shows that residence is in a sense artificial; s 246 of the Act of 1970 would have
been of crucial importance there.

It is common ground that the employees are subject to United Kingdom C
income tax under Schedule E, Case I or II: see ss 181 *et seq*. of the Income and
Corporation Taxes Act 1970 and s 21 of the Finance Act 1974, amending s 181
(1). Both the original provision and the amendment refer to persons "resident
and ordinarily resident in the United Kingdom" in Case I, and to persons "not
resident or, if resident, then not ordinarily resident in the United Kingdom" in
Case II. Those Cases limit taxability to (i) where the taxpayer is resident in the D
United Kingdom, or otherwise (ii) where the duties are performed in (or the
source of the income is in) the United Kingdom. Section 38 (6) of the Finance
Act 1973 deems emoluments in respect of duties performed in a designated
area in connection with exploration or exploitation activities as emoluments in
respect of duties performed in the United Kingdom, and so brings Schedule E,
Case II to bear. Section 38 (6) applies "for the purposes of income tax". That E
must mean for all the purposes of income tax, including collection, as well as
liability. The statutory fiction enacted by the section must extend to the
consequences and incidents of the deemed state of affairs: see *per* Lord
Asquith in *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council* [1952]
AC 109, 132. The collection obligations of the employer thus apply as if the
duties had actually been performed in the United Kingdom. It is necessary to F
define (a) the source of the income and (b) the person paying the tax. The
source of income is dealt with in s 1 of the Act of 1970, which provides for the
charging of income tax on "property, profits or gains". The charge on persons
is not provided for in the Act, but is left to regulations.

The collection of Schedule E tax by PAYE is dealt with in s 204 of the Act
of 1970. Section 204 itself is universal in its terms and has no express G
limitations as to declarations, repayment, recovery etc. The Crown's central
contention is that Parliament, having specified the charge to Schedule E tax in
s 181 of the Act of 1970, did not intend any territorial limitations on the ambit
of s 204 other than those contained in Schedule E. [Reference was made to
*Government of India* v. *Taylor* [1955] AC 491, 504, *per* Viscount Simonds.]
By s 204 (1), income tax must be "deducted or repaid by the person making the H
payment ..." The employer therefore does not have to pay the tax himself,
but must deduct it when he pays emoluments. That is part of the "universal"
application. The deduction in s 204 (1) is, by subs (2), subject to regulations.
They are the Income Tax (Employments) Regulations 1973 (SI 1973 No 334).
[Reference was made in particular to the definition of "emoluments" in regn 2
(1), to regns 13, 26 to 28, 35 to 43 and 49 to 51; and to ss 65 to 68 of the Taxes I
Management Act 1970.] Since it is only regns 26 (3) and (4) which enable the
Revenue to obtain tax from the employee himself, in some circumstances, it is
clear that Parliament intended PAYE to be a complete code, rather than a
back-up to direct collection. It follows that PAYE was intended to be
congruent with, and to work with, Schedule E, and not to be additional to it.

The wording of the Regulations, as of s 204, is universal, and contains no justification for limiting their application, otherwise than as previously indicated. In particular, the Regulations have nothing to say about non-resident companies, although they expressly state limitations in other difficult areas, such as seamen, servicemen and tips in restaurants. *Whitney* v. *Commissioners of Inland Revenue*(1) [1926] AC 37 vividly illustrates the universality of the charge to and collectability of United Kingdom tax. It is significant that the subject matter was the charge to surtax, which in 1925 increased substantially. Viscount Cave L.C., dissenting, emphasised the difficulty of collection and the Anglo-centric nature of the charge, but the other members of the House were not so concerned with such matters. The general proposition can be drawn from the case that Parliament is not to be presumed to limit the collectability of tax further than is already limited in the substantive tax law.

If there is some further limitation on the extent of s 204, the onus is on the respondents to show what it is. *Peter Buchanan Ltd.* v. *McVey* (*Note*) [1955] AC 516 shows that Parliament realises that even if it legislates in terms which appear to be universal, there will sometimes be practical limitations. It is accepted that in some circumstances English legislation is subject to the type of territorial limitation described by James L.J. in ex parte *Blain* (1879) 12 Ch D 522, 526. However, the test there enunciated, couched in terms of foreigners coming to this country who are "within the allegiance of the sovereign" and "entitled to the protection of the sovereign", has no application to tax legislation, where questions of allegiance are almost wholly irrelevant and where only two matters fall to be considered, namely (1) residence in this country, or (2) income arising in this country: see *Westminster Bank Executor and Trustee Co.* (*Channel Islands*) *Ltd.* v. *National Bank of Greece S.A.* [1971] AC 945, approving a statement of Lord Herschell in *Colquhoun* v. *Brooks*(2) (1889) 14 App Cas 493, 504. See also *Stokes* v. *Bennett*(3) [1953] Ch 566, 575, *per* Upjohn J. If the test in ex parte *Blain* is applied, the respondents in any event come within it. Since they have a place of business in this country, and are registered here in accordance with s 407 of the Companies Act 1948, they have brought themselves within United Kingdom jurisdiction and have a sufficient "presence" here. The fact that the employees were paid abroad should not affect the matter. That is simply a matter of internal organisation of the company. The important points are that the employees' emoluments are subject to Schedule E tax and that the company has a presence in the United Kingdom.

The Special Commissioners in their Case Stated sought a link with the United Kingdom, but they were looking for factors which "[connected] the transaction with this country sufficiently to bring it within the ambit of s 204". The Crown's approach is different: one must first look at the source of income, and then see if PAYE is congruent with it. An important finding of the Commissioners was that, if they had held the other way, the deduction of tax would not have been impracticable.

Dillon J. held that the Crown failed on the broader ground but succeeded on a narrower ground. The Crown's stance on the latter is slightly different from the ground of Dillon J.'s decision(4) [1981] 1 WLR 59, 66–67. The judge said, at page 64B(5), that the primary question was how far s 204 was

(1) 10 TC 88. (2) 2 TC 490. (3) 34 TC 337. (4) Page 200 *ante*.
(5) Page 198 *ante*.

applicable in a case with a foreign element. The Crown would say, "section A 204 and the Regulations", since only the latter impose a duty on the employer to pay the tax. In rejecting the "universal" approach, the judge referred, at pp. 64–65,[1] to various difficulties that might arise in the practical application. He has taken examples which are admittedly difficult to police, but courts have not in the past been deterred by similar difficulties from applying a principle when they thought it right to do so: see *Whitney* v. B *Commissioners of Inland Revenue*[2] [1926] AC 37 and *Stokes* v. *Bennett*[3] [1953] Ch 566.

The Court of Appeal rejected both the broad and narrow arguments. They concentrated on the company's residence, and came to the wrong conclusion. Two points were not raised at all in that court: s 246 of the Income and Corporation Taxes Act 1970 and Lord Herschell's statement in C *Colquhoun* v. *Brooks*[4] 14 App Cas 493, 504.

*Carnwath* following. The genesis of the PAYE scheme is important because it shows (i) a close link throughout with the Regulations, and (ii) that the scheme today is remarkably similar to when it was inaugurated. If there are now anomalies at the edges, that might well be because circumstances have changed, but that is no reason for construing the scheme differently. D

The first provision was s 11 of the Finance (No. 2) Act 1940. For the first time, there was a power to make deductions, but there still had to be a previous assessment, and the previously arising basis of assessment was used. The Income Tax (Employments) Act 1943 introduced (a) the current year basis and (b) a PAYE regulation-making power, in substantially the same form as now, but limited to certain occupations (manual labourers and weekly earners). The E Income Tax (Offices and Employments) Act 1944 amended the Act of 1943 to apply to all emoluments chargeable under Schedule E except those of the armed forces. The first Regulations were made in 1944. Section 30 (3) of the Finance Act 1946 deleted the armed forces exception.

The law as it then stood was consolidated in ss 156 and 157 of the Income Tax Act 1952. Section 156 brought in the Schedule E charge as it then was (it F was reformulated in 1956). Section 157—now s 204 of the Income and Corporation Taxes Act 1970—provided for PAYE. Subsection (6) applied the scheme to all Schedule E emoluments, and in subs (2) a link was made with the regulation-making power. The pattern therefore was that emoluments were defined in Schedule E, with an inbuilt territorial limitation, and s 157 imposed a machinery for collecting *those* emoluments. Anyone who asserts that there G must be a further limitation must point to words which import it.

*Frank Heyworth Talbot Q.C., John Gardiner Q.C.* and *Roger C. Thomas* for the respondents. The question is a very short one, viz., whether or not a provision in an Act of the United Kingdom Parliament can rightly be construed as imposing on a person who is neither resident in the United Kingdom nor a United Kingdom national an obligation (possibly onerous) to H operate the PAYE scheme in respect of payments of remuneration made (in U.S. dollars) elsewhere than in the United Kingdom. Two points need emphasis. (1) The case is in no way concerned with a determination of the tax liability of the respondents' employees. The question is whether the respondents are required to act as tax collectors in respect of whatever may be the employees' tax liability. (2) There is in the instant case no element of I

(1) Page 199 *ante*. (2) 10 TC 88. (3) 34 TC 337. (4) 2 TC 490.

A anything that could be regarded as an artifice for the avoidance of tax. It might be that the effect of upholding the Court of Appeal's decision would be to help employers to avoid tax; but it could not be right for the respondents to be damnified for fear that less scrupulous employers might behave otherwise.

All Acts of the United Kingdom Parliament must be construed as subject to territorial limitations, i.e., they operate only in regard to persons who are B resident in the United Kingdom or have United Kingdom nationality, or to acts done within the jurisdiction: ex parte *Blain*, 12 Ch D 522, and cases there cited. As the respondents are neither resident in the United Kingdom nor possessed of United Kingdom nationality, s 204 of the Income and Corporation Taxes Act 1970 could apply to them only in so far as they performed some relevant act in the United Kingdom. Section 204 itself specifies in the plainest terms the C relevant act: it operates only "On the making of any payment of, or on account of, any income assessable to income tax under Schedule E . . ." That is the crux of the whole matter. Since no such payments to employees at work in the North Sea have been made in the United Kingdom, s 204 cannot rightly be construed as imposing any duty on the respondents.

It is trite law that in construing an Act, one must try to ascertain the D intention of Parliament. Normally one looks at the words themselves alone, and their meaning in normal speech. But sometimes it is impossible to construe the Act in that way. Take, for example, ss 1, 108 (1) (*b*) ("all interest of money . . .") and 109, Case III (*a*) ("any interest of money . . ."), of the Act of 1970. Since there are no words of limitation at all, those provisions could apply to a Japanese citizen living in Japan, paying interest to another Japanese citizen. E Obviously they cannot in practice apply thereto. Therefore one has to recognise throughout that there must be some limitation.

The Crown contend that the only limitation to which s 204 is subject is defined by the scope of the charge to Schedule E tax. If that is right, stark consequences would follow. Any person anywhere in the world employing an individual who is a United Kingdom resident would be under all the F obligations prescribed by s 204 and the Regulations. That would include s 204 (2) (*b*) and regn 32 of the 1973 Regulations, so that all wage sheets and other documents would have to be available for inspection by the Inland Revenue "at the employer's premises"—anywhere in the world. The proposition that that is nothing more than a rough edge to the provisions of the law is unacceptable. That is not a unique or rare case, but a very common one. For G example, a United States corporation having no place of business here and not resident here, engaging a young man resident, ordinarily resident and domiciled in the United Kingdom to work for a while in the New York office, would be subject to the whole paraphernalia of s 204 and the Regulations. It could not reasonably be supposed that Parliament intended the provisions to apply to such an employer, but it cannot have been beyond the contemplation H of the legislature that such a situation would arise. The Crown's submissions involve consequences so inconceivable that the legislation should be regarded as subject to the well-recognised limits of territoriality expressed in ex parte *Blain*, 12 Ch D 522; *Colquhoun* v. *Heddon*(1) (1890) 25 QBD 129, 134, 137–138, *per* Lord Esher M.R., and *Inland Revenue Commissioner* v. *Associated Motorists Petrol Co. Ltd.* [1971] AC 784, 791, *per* Lord Wilberforce. Section

(1) 2 TC 621.

204 was obviously intended to facilitate the collection machinery. But that cannot be done by dint of regulations which are impossible to enforce.

The Crown's alternative case rests on what they call the "presence" of the respondents in the United Kingdom. Income tax law knows nothing of "presence" as distinguished from residence. Nowhere in the Income Tax Acts does one find "presence" as determinative of liability; nor is there any judicial authority which ratifies the proposition. Presence does have significance in determining whether there is residence; unless it does so, it has no significance at all. If there is an intermediate stage, presence, between residence and non-residence, it is difficult to see what constitutes it. Will an office in the United Kingdom do, and if so, how big does it have to be, and how many employees? The mere fact that the respondents are liable to United Kingdom corporation tax is not enough for s 204, because the liability to account for Schedule E tax depends on the payment of remuneration. That in turn is based on the employees' contracts of employment, which were not made in this country and are not enforceable here.

The Court of Appeal decision was in all respects correct.

*Gardiner Q.C.* following. To say that the only difficulty with the "universal" approach is enforceability is not good enough. If the Crown are right, the Revenue can in principle send determinations all over the world to foreigners having no connection with this country. It is that sort of consequence that is at the root of the doctrine of territoriality. Moreover, the impact would be entirely capricious, since liability would in practice depend on who had assets in this country. A further consequence would be that, since the contracts of the employees are undoubtedly governed by foreign law, if the respondents deducted \$30 from the \$100 wage of an employee and the employee sued overseas for the extra \$30, he would be bound to win since the penal laws of other countries are not enforced locally: *Brokaw* v. *Seatrain U.K. Ltd.* [1971] 2 QB 476, 482F, *per* Lord Denning M.R. The Revenue could thus collect the employee's tax from the employer who could not, himself, deduct it when paying his employee. There would be similar complications if the employer, having deducted tax, failed to hand it over to the Revenue. Section 98 of the Taxes Management Act 1970 attaches penalties to failure to perform the obligations in the Regulations. There is initially a penalty of £50, and there could ultimately be a committal to prison, by virtue of s 4 of the Debtors Act 1869. Thus, although the words of obligation at the beginning of s 204 are general and unqualified, they must be subject to the limitation of ex parte *Blain*, 12 Ch D 522; otherwise the consequences would be wholly unreasonable.

The history of the Schedule E charge supports the contention that s 204 is not intended to apply to payments made abroad by foreigners. The basis of charge as respects the foreign element in earnings was very different before and after 1974. Until 1956, emoluments of foreign employments were not taxed under Schedule E, but under Schedule D, Case V, on a remittance basis: see for example the Income Tax Act 1952, ss 122 (Schedule D) and 156 (Schedule E). The test for determining whether it was a foreign emolument was not where the duties were performed, but where the income really came from, i.e. the place of payment: *Bray* v. *Colenbrander*[1] [1953] AC 503, 511, *per* Lord Normand. Before 1956, therefore, a foreign employment was not within

(1) 34 TC 138.

Schedule E for the purpose of the then equivalent of s 204, and the section could not have been applied to a payment made outside the United Kingdom. In 1956 foreign emoluments were transferred to Schedule E, but they were still only taxed on a remittance basis, and no change in that respect was made by the Income and Corporation Taxes Act 1970. The basis of charge was extended by the Finance Acts 1973 and 1974 to the worldwide income of the United Kingdom residents, the Act of 1974 abolishing the remittance basis in all but the remotest of possibilities. The difficulty is that Parliament extended the charge without bothering to amend s 204. However, as it stands s 204 cannot have a different meaning after 1974 from what it had before. Since it could not have been intended initially to apply to non-residents paying moneys abroad, as such emoluments were not within Schedule E anyway, the inference is that the position must be the same now. Some degree of support for that is found in s 24 of the Finance Act 1974, which in certain circumstances transfers the obligation under s 15 of the Taxes Management Act 1970 to make returns in respect of payments to employees, away from the employer where the employer is "resident outside and not resident in the United Kingdom ..." The implication is that such employers do not have the same obligations as resident employers, and, further, that the relevant criterion for these purposes is residence and not "presence". See also Schedule 15 to the Finance Act 1973, which supplements s 38 of that Act. It is significant that while that Schedule provides for territorial extension in paras 2 and 4, and mentions in para 5 assessment under Schedule E, there is no reference at all to s 204 of the Income and Corporation Taxes Act 1970.

The authorities cited by the Crown are not helpful because they all dealt with Schedule D rather than Schedule E. Schedule D is different because the only deduction at source under that Schedule occurs in respect of United Kingdom source income (see ss 52 and 53 of the Act of 1970) and there is no deduction obligation as regards the worldwide income of United Kingdom residents, with the sole possible exception of s 159 of the Act of 1970. In Schedule D Parliament has erected an entirely different system, consistent with ex parte *Blain*, 12 Ch D 522, and territoriality.

Section 246 of the Act of 1970 is wholly irrelevant to the case. It merely brings corporations which would otherwise be liable to income tax into charge to corporation tax.

The Crown's alternative argument proceeds on the basis that there is some territorial limitation to be imported, and that ex parte *Blain* applies, but not fully. The authorities are all against such a partial application: see *Colquhoun* v. *Heddon*(1) 25 QBD 129, 136–137; *Cooke* v. *Charles A. Vogeler Co.* [1901] AC 102, 107–108 and In re *Debtors* (*No. 836 of 1935*) [1936] Ch 622, 631–632, 636. Those cases are direct authority against the Crown's "presence" argument; in each of them the person concerned traded in the United Kingdom but was excluded from the application of the statute under the territorial principle, because of his foreign status.

Dillon J.'s decision cannot possibly be right since, as was conceded before the Court of Appeal, it involves completely recasting s 204 by the insertion, after "making payment", of "but confined in a case of a person not present in the United Kingdom to the payment of emoluments in respect of duties

(1) 2 TC 621.

performed in the United Kingdom (including the designated area)". One cannot rewrite the section: see *Colquhoun* v. *Heddon*[1], 25 QBD 129, 136–137.

*Potter Q.C.* in reply. There is no question of tax avoidance in the present case, but Parliament cannot have intended avoidance to become blatant, which would happen if the respondents are right. That consideration swamps all the anomalies mooted by the respondents. The argument that the Crown would have enforcement difficulties is nothing to the point. There is already vast unpaid tax, e.g. on foreigners' bank deposits in the City of London. If the taxpayer in *Whitney* v. *Commissiners of Inland Revenue*[2] [1926] AC 37 had not gone to court, it would have been difficult to collect the tax there. The Inland Revenue inevitably have to rely on the willingness of overseas people to pay our taxes. One answer to the problem is to have double taxation agreements.

As to the potential burden that would be placed on overseas employers if the Crown are right, there is an overriding provision in s 118 (2) of the Taxes Management Act 1970 giving relief from the obligations in the Act in cases of "reasonable excuse" for failing to comply with them.

Although the taxability of overseas emoluments has changed since 1943, s 204 of the Income and Corporation Taxes Act 1970 is congruent with Schedule E and changes its colour according to the changing nature of Schedule E.

"Presence" is not intended as a term of art, but is simply coined for present purposes. The respondents have to write into s 204 of the Regulations some implication which exempts them from PAYE because of their non-residence. The Crown's interpretation does not involve writing anything into the section. Residence in the United Kingdom is only relevant to income earned abroad. The respondents' residence is wholly immaterial to the present question, whether or not they pay United Kingdom corporation tax. What brings them within the net is (a) their permanent establishment here and (b) their trade here.

In *Colquhoun* v. *Heddon* 25 QBD 129, it was only with reluctance that Fry L.J. concurred in the Court of Appeal's decision: see page 140. Lopes L.J., at page 141, associated himself with Fry L.J.'s doubts.

Their Lordships took time for consideration.

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The following cases were cited in argument in addition to those referred to in the speeches:—*East End Dwellings Co. LD.* v. *Finsbury BC* [1952] AC 109; *Stokes* v. *Bennett* 34 TC 337; [1953] 1 Ch 566; *Whitney* v. *Commissioners of Inland Revenue* 10 TC 88; [1926] AC 37; *Inland Revenue Commissioner* v. *Associated Motorist Petrol Co., Ltd.* [1971] AC 784; *Sea Train U.K. Ltd.* v. *Brokaw* [1971] 2 QB 476; *Bray* v. *Colenbrander* 34 TC 138; [1953] AC 503; In re *Debtors* [1936] Ch 622; *Bennett* v. *Marshall* 22 TC 73; [1938] 1 KB 591.

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[1] 2 TC 621. [2] 10 TC 88.

**Lord Scarman**—My Lords, in this appeal the Crown seeks to have restored the determination of the Inspector of Taxes that tax amounting to £2,033,254 is payable by the Respondent corporation ("Oceanic") under Regn 26 of the PAYE Regulations (S.I. 1973 No. 334) for the year 1977–78. The issue is of great practical importance to the Revenue and to Oceanic: it is also one of some legal difficulty. The issue turns upon the true construction of s 204 of the Income and Corporation Taxes Act 1970—the section which imposes the PAYE obligation.

Oceanic is a foreign corporation registered in Panama: it is not resident in the United Kingdom for the purposes of income tax. Its operations are worldwide and includes the provision of technical services and equipment to those who are engaged in the exploration and exploitation of the oil and gas resources of the North Sea. The issue in the appeal is whether Oceanic can be required to operate the PAYE procedure for tax collection in respect of the wages and salaries of those of its work force whom it employs in the United Kingdom sector of the North Sea. It is conceded that the emoluments of these employees are assessable to British income tax under Schedule E. Is that, by itself, enough to impose upon Oceanic the PAYE obligation? The Crown submits that it is. If, however, it is not, the Crown's alternative submission is that Oceanic has by reason of its operations and trading activities in the United Kingdom and in the North Sea a sufficient presence in, or connection with, the United Kingdom to justify the Crown's requirement that it operate PAYE in respect of the earnings of the personnel it employs in the United Kingdom sector of the North Sea.

To these submissions the Respondent makes reply as follows:—in its submission, the anomalies and enforcement problems arising from an attempt to impose the PAYE obligation upon a non-resident corporation paying emoluments abroad to persons who are working outside the United Kingdom are such that, even though those emoluments be (as they may well be) assessable to tax under Schedule E, Parliament cannot have intended to impose upon the employer the duties of deduction and collection of tax formulated in s 204 and the PAYE Regulations: the section must be subject to an implied territorial limitation which would exclude its operation in such circumstances.

The Special Commissioners upheld the Respondent's submission. Dillon J., while he rejected the Crown's first submission because of its "world-wide" implications which he could not conceive Parliament intended and which he held to be inconsistent with the general rule that an Act of Parliament only applies to transactions within the United Kingdom, upheld the Crown's second submission, finding in s 38(6) of the Finance Act 1973 (which it will be necessary to consider later) a sufficient link with the United Kingdom to justify the imposition of the PAYE obligation in respect of emoluments arising from duties performed in the United Kingdom sector of the North Sea. He reversed, therefore, the determination of the Special Commissioners in favour of the Respondents.

The Court of Appeal reversed the judgment. They considered s 38(6) of the 1973 Act, upon which the judge relied, to be a charging provision affording no guidance as to the collecting liability imposed by s 204. They accepted the Respondent's submission that some territorial limitation must be placed upon the s 204 liability. They refrained, however, from formulating the limitation. It was, in Brightman L.J.'s view unnecessary to say more than that it must exclude a non-resident corporation making payments in circumstances such as those of this case.

The facts have been lucidly set out by the Special Commissioners and summarised by Dillon J. at the beginning of his judgment. It will suffice to mention specifically only the following:

(1) Oceanic is not resident for income tax purposes in the United Kingdom: (2) It has, however, a design office at Wembley, a platform fabrication yard near Inverness, and a branch at Aberdeen providing skilled services in connection with its North Sea activities. It operates PAYE in respect of employees at these establishments: (3) It accepts that it has a place of business within Great Britain and is liable to corporation tax on profits from its activities in the United Kingdom and in the United Kingdom sector of the North Sea, all of which are taxed as a single trade. It is an overseas company to which s 407 of the Companies Act 1948 applies. It has complied with the requirements of the section and has an address for service in Wembley: (4) The operating base for its North Sea activities is the port of Antwerp; the headquarters of its North Sea Division are at Brussels. Its North Sea activities consist of installation and maintenance of platforms and the laying of pipelines in the United Kingdom and Norwegian sectors of the North Sea, for which purpose it operates barges out of Antwerp: (5) The work force employed on these operations was in 1977–78 several hundred strong (approximately 400 in 1977), of whom approximately 60 per cent. were United Kingdom nationals. They had written contracts not governed by English law. They were paid (in U.S. dollars) and employed outside the United Kingdom.

The Statutes—The Continental Shelf Act 1964 makes provision for the exploration and exploitation of the natural resources of the continental shelf outside territorial waters. Its purpose is to give effect to certain provisions of the Geneva Convention on the High Seas (April 1958). The Act recognises that the United Kingdom sector of the North Sea continental shelf is not part of the United Kingdom: s 1(1). The Act provides that areas of the continental shelf outside territorial waters may be designated by Order in Council as areas within which the United Kingdom may exercise rights of exploration and exploitation: s 1(7), certain areas of the North Sea, compendiously described in these proceedings as "the U.K. sector of the North Sea" have been so designated.

Consequential upon the Continental Shelf Act, s 38 of the Finance Act 1973 made provision for the territorial extension of charge to income tax, capital gains tax, and corporation tax. Subsection (1) provides that the territorial sea of the United Kingdom shall for tax purposes be deemed to be part of the United Kingdom. Designated areas under the 1964 Act, which are by definition beyond the territorial sea, are not part of the United Kingdom. The section,however, extends the application of some of our tax laws to these areas. In particular, subs (4) provides that profits or gains arising to any person not resident in the United Kingdom from exploration or exploitation activities carried on in the United Kingdom or in a designated area shall for the purposes of corporation tax or capital gains tax be treated as the profits or gains of a trade carried on in the United Kingdom through a branch or agency. The subsection brings such a person within s 246 of the Income and Corporation Taxes Act 1970, thereby recognising a "tax presence" in the United Kingdom of a non-resident corporation if it be engaged by way of trade in exploration or exploitation activities in designated areas. Subsection (6) brings within the charge to income tax emoluments from an office or employment in respect of duties performed in a designated area: they are to be

A treated for the purposes of income tax as emoluments in respect of duties performed in the United Kingdom. In other words they are chargeable to income tax under Schedule E. The effect of the section is, therefore:

(1) that a non-resident corporation, which, like Oceanic, is engaged by way of trade in exploration or exploitation activities in the United Kingdom sector of the North Sea, is liable to corporation tax and capital gains tax in
B respect of the profits and gains of its trade there; and (2) that its employees engaged in the United Kingdom sector are liable to tax under Schedule E in respect of their earnings in the sector.

Non-resident corporations and their employees are, therefore, in certain very important respects subject to British tax laws in respect of their activities in the United kingdom sector of the North Sea.

C I turn now to the Income and Corporation Taxes Act 1970. Put very briefly, liability to tax depends, as it always has, upon the location of the source from which the taxable income is derived or the residence of the person whose income is to be taxed. If either the source of income or the residence of the owner of the income is in the United Kingdom, the income is liable to tax. The combination of this principle of income tax law with the provisions of s
D 38(6) of the Act of 1973 results in persons, whether or not resident in the United Kingdom, who are paid emoluments in respect of duties performed in the United Kingdom sector of the North Sea, being liable to income tax in respect of those emoluments.

For the purposes of this appeal, the critical sections of the Income and Corporation Taxes Act 1970 are ss 181 and 204, which provide for the
E charging and collection of income tax under Schedule E, and s 246 which imposes a corporation tax liability on a non-resident corporation in respect of the profits of a trade carried on through a branch or agency within the United Kingdom. Again, it is to be noted that a tax liability can arise in the case of non-resident persons where the income, profit, or gains arise from activities carried on within the United Kingdom.

F Sections 181 and 204 bear directly on the issue of this appeal. Section 181 as amended by s 21 of the Finance Act 1974 provides for the Schedule E charge to income tax. Tax under the Schedule is charged in respect of emoluments falling under one or more of three Cases:

Case I—where the employee is resident and ordinarily resident in the
G United Kingdom:

Case II—in respect of duties performed in the United Kingdom where the person is not resident (or not ordinarily resident) in the United Kingdom:

H Case III—in respect of emoluments received in the United Kingdom by a person there resident.

The Schedule E charge is, therefore, not limited to the income of United Kingdom residents but is imposed on non-residents in respect of duties performed in the United Kingdom.

Section 204 imposes the PAYE system of tax collection in respect of any
I income assessable under Schedule E. On the making of any payment on account of such income, the payer is to deduct the tax: subsection (1). The

Board of Inland Revenue is to make regulations with respect to the assessment, A
charge, collection, and recovery of Schedule E tax; and these regulations may include (as, indeed, the Regulations made most assuredly do) provision for:

*(a)* requiring the payer to make deduction according to tax tables prepared by the Board, *(b)* the production for inspection of relevant documents and records, *(c)* the collection and recovery of the tax to be deducted.

Criminal sanctions and penalties for failure to comply with PAYE B
obligations arise under s 98 of the Taxes Management Act 1970.

Section 204 is general in terms. It contains no express territorial limitation upon the extent of the obligation it imposes. In particular, it is silent as to the place of payment, the currency in which payment is made, the residence of the person making payment, and the place of the contract pursuant to which the payments are made. It contains only two express limitations upon the extent of C
the liability it imposes: (1) the PAYE obligation arises when the payment is made, and (2) it arises only in respect of income assessable under Schedule E.

It is plain from the terms of the section and its position as the first section in the chapter dealing with the assessment collection and recovery of Schedule E tax that Parliament intended PAYE to be the primary method of Schedule E tax collection. Provision is, however, made by s 205 and Regn 50 of the 1973 D
Regulations for direct assessment upon and collection from the employee at the option either of the Board of Inland Revenue or the employee.

To conclude this summary of the relevant statutory provisions, two propositions of law may be said to emerge with clarity: (1) residence is not a necessary condition of tax liability if there be otherwise a sufficient connection between the source of the income, profit, or gain and the United Kingdom; E
and (2) section 204, silent itself as to the territorial extent of the obligation it imposes, is a machinery section for the collection of Schedule E tax under Cases I and II.

Case III is excluded because its charge arises on the receipt of income, whereas s 204 operates upon a person making a payment as and when he makes the payment. Subject, therefore, to the exclusion of Case III s 204 F
applies whenever a payment is made on account of income, unless it be necessary to imply some limitation into expressed in Schedule E itself.

I would add that a review of the statutory provisons amply justifies Dillon J.'s comment (page 66 D([1])) that "section 204 must apply where the duties of the office or employment are carried out within the United Kingdom, whether the employer is foreign or not and whatever method be adopted for paying the G
emoluments for these duties".

The Principle of Construction—The question being, therefore, whether there is to be implied into s 204 a territorial limitation further to those expressed in Schedule E, it becomes necessary to consider what principle of law would justify an implication.

It is well settled law that English legislation is primarily territorial: Brett H
L.J., Ex parte *Blain, infra* page 528([2]). The principle was recognised and

([1]) [1981] 1 WLR 59; page 200 *ante*. ([2]) (1879) 12 Ch D552.

formulated (admittedly in language which now has echoes of a world which has departed) by the Court of Appeal in Ex parte *Blain* (1879) 12 Ch D 522, and was commented on with approval by the Earl of Halsbury L.C. in *Cooke* v. *Charles A. Vogeler Company* [1901] AC 102, at page 107. Two passages from the judgments in *Blain's* case are directly relevant to the issue in this case. Frist, a passage from the judgment of James L.J. At page 526 he referred to the:

> "broad, general, universal principle that English legislation, unless the contrary is expressly enacted or so plainly implied as to make it the duty of an English Court to give effect to an English statute, is applicable only to English subjects or to foreigners who by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction... But, if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English Legislature could have ever intended to make such a man subject to particular English legislation." And secondly a pasage from the judgment of Cotton L.J. at pages 531–2: "... all laws of the English Parliament must be territorial—territorial in this sense, that they apply to and bind all subjects of the Crown who some within the fair interpretation of them, and also all aliens who come to this country, and who, during the time they are here, do any act which, on a fair interpretation of the statute as regards them, comes within its provisions... If he is resident here temporarily, and does an act which comes within the intent and purview of a statute, he, as regards that statute, as does every alien who comes here in regard to all the laws of this realm, submits himself to the law, and must be dealt with accordingly. As regards an Englishman, a subject of the British Crown, it is not necessary that he should be here, if he has done that which the Act of Parliament says shall give jurisdiction, bcause he is bound by the Act by reason of his being a British subject, though, of course, in the case of a British subject not resident here, it may be a question on the construction of the Act of Parliament whether that which, if he had been resident here, would have brought him within the Act, has that effect when he is not resident here."

Put into the language of to-day, the general principle being there stated is simply that, unless the contrary is expressly enacted or so plainly implied that the Courts must give effect to it, United Kingdom legislation is applicable only to British subjects or to foreigners who by coming to the United Kingdom, whether for a short or a long time, have made themselves subject to British jurisdiction. Two points would seem to be clear: first, that the principle is a rule of construction only, and secondly, that it contemplates mere presence within the jurisdiction as sufficient to attract the application of British legislation. Certainly there is no general principle that the legislation of the United Kingdom is applicable only to British subjects or persons resident here. Merely to state such a proposition is to manifest its absurdity. Presence, not residence, is the test.

But, of course, the Income Tax Acts impose their own territorial limits. Parliament recognises the almost universally accepted principle that fiscal legislation is not enforceable outside the limits of the territorial sovereignty of the kingdom. Fiscal legislation is, no doubt, drafted in the knowledge that it is the practice of nations not to enforce the fiscal legislation of other nations. But, in the absence of any clear indications to the contrary, it does not necessarily follow that Parliament has in its fiscal legislation intended any territorial limitation other than that imposed by such unenforceability: see

*Government of India, Minister of Finance (Revenue Division)* v. *Taylor* [1955] AC 491, at page 503. Indeed, British tax liability has never been exclusively limited to British subjects and foreigners resident within the jurisdiction. As long ago as 1888, Lord Herschell in the well-known case of *Colquhoun* v. *Brooks*(1) (1889) 14 App Cas 493 at page 503 summarised the income tax position in one sentence (which received the approval of this house in *National Bank of Greece* v. *Westminster Bank*(2) [1971] AC 945, at page 954): "The Income Tax Acts, however, themselves impose a territorial limit; either that from which the taxable income is derived must be situate in the United Kingdom or the person whose income is to be taxed must be resident there."

In the light of these general considerations, I now turn to consider the issue of this appeal. The PAYE obligation is the primary means established by law for the collection of tax charged under Schedule E. Section 204, which imposes the obligation, is the first section in the chapter dealing with the assessment, collection and recovery of Schedule E tax. In seeking the territorial limitations to which the liability imposed by the section is subject, it makes sense, therefore, at the outset of the search to consider the section in its Schedule E context. It is a section tied to the Schedule: its machinery of collection is available only in respect of Schedule E tax. And Schedule E has its own express territorial limitations. The operation of s 204 is, therefore, subject to them: that is to say, however, no more than that the PAYE obligation can arise only in respect of emoluments charged to tax under the Schedule. The possibility that s 204 may have to be read subject to further limitation remains.

The section itself contains no express territorial limitation. More particularly, it imposes the PAYE obligation on making a payment on account of Schedule E emoluments without any limitation as to place of payment, the currency in which it is made or the residence of the payer. Is it then necessary to imply any further limitation? And, if any is to be implied, what is it to be?

The persuasiveness of the Crown's submission lies in the attractive robe of logicality which it wears. How can it be necessary to write into the section any territorial limitation other than the two specified in the two Schedule E cases to which s 204 by its language plainly applies? To this question the Respondent makes answer that it is inconceivable that Parliament should have intended the PAYE obligation to be imposed on a foreign employer in respect of the emoluments paid outside the United Kingdom in a foreign currency to a person engaged in duties wholly performed outside the United Kingdom. Yet, if the Crown is right, the garb of logicality which it claims for its submission conceals extraordinarily far-reaching and anomalous consequences. How can the PAYE duties be enforced? How can the system be made to work? How can it be supervised? How can the necessary documents be obtained for inspection by the Revenue, unless the foreign corporation is compliant? It all adds up to a practical impossibility of enforcing or monitoring the system against an uncooperative employer outside the United Kingdom making payments outside the United Kingdom.

The difficulties are such that I have reached the conclusion that the Judge and the Court of Appeal were right to hold that some limitation other than those specified in Schedule E must be implied into s 204. It is perfectly true, as Mr. Potter Q.C. for the Crown urged, that there are situations where our tax laws recognise the existence of a tax liability even though the tax is not

(1) 2 TC 490. (2) 46 TC 472.

collectable and the tax obligation is unenforceable. But, in my view, the problems of construing s 204 so as to extend the duty it imposes to all income assessable under Cases I and II of Schedule E and the anomaly of the theoretical subjection of non co-operative foreigners outside the United Kingdom to the penalties of non-compliance compel the conclusion that there must be some further limitation implied.

I turn now to the alternative and narrower submission of the Crown. The Court of Appeal did not answer the question as to the extent of the s 204 liability. In the words of Brightman L.J.([1]) (page 234) they thought it:

> "...unnecessary to express a concluded view on this formulation of the section 204 liability. It is sufficient to say that the taxpayer company is not a United Kingdom company, or resident in the United Kingdom and does not make payments in this country to the employees of its North Sea division, without considering whether it would make all the difference if, for example, the taxpayer company were an individual with British nationality.

They did, however, reject Dillon J.'s view that the effect of s 38(6) of the Act of 1973 was to extend the s 204 liability to cover a non-resident foreign company making payments abroad to employees engaged in performing duties in the United Kingdom sector of the North Sea.

The Crown has formulated its submission in this House somewhat differently from the way in which the Judge reached his decision. The judge relied exclusively upon s 38(6). The Crown, while adopting his view as to the importance of the subsection in establishing a link between the designated areas of the North Sea and the United Kingdom, did not, save perhaps by way of last resort, ask the House to treat the subsection as decisive in the interpretation of s 204. Their submission was that in all the circumstances Oeanic had a sufficient "tax presence" in the United Kingdom to justify the imposition of the s 204 liability.

It will be convenient to state the view which I have reached as to the true effect of s 38(6) before considering the Crown's argument. I agree with the Court of Appeal. The effect of the subsection is merely to render income earned in respect of duties performed in the United Kingdom sector of the North Sea assessable under Schedule E. Once the conclusion is reached that not all income assessable to Schedule E is subject to collection by PAYE, it cannot be decisive as to the formulation of the s 204 liability. It remains, however, an important indication. It goes some way towards establishing a company's presence in the United Kingdom in that the duties performed by a company's employees in the United Kingdom sector of the North Sea are to be treated for the purposes of income tax as perfomed within the United Kingdom.

Is, then, the true limitation upon the s 204 liability the presence within the United Kingdom of the person making the payment, even though he be non-resident and the payment be made outside the United Kingdom? The "tax presence" concept was strongly attacked by Mr. Heyworth Talbot Q.C. for the Respondent. He submitted that income tax law knows nothing of such a

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([1]) [1982] 1 WLR 222; page 209 *ante*.

concept as determinant of tax liability. Presence is only relevant as evidence of residence; and Oceanic is admitted to be a non-resident corporation. A

My Lords, I find nothing anomalous or contrary to principle in a "tax presence" being the determinant of the s 204 liability. The Schedule E charge to tax is not limited by reference to the residence of the employer paying the emoluments: it applies also to emoluments, wherever paid, in respect of duties perfomed in the United Kingdom. To imply into s 204 a limitation to B employers resident in the United Kingdom would mean that a non-resident employer of persons working in the United Kingdom and paid in this country could escape the PAYE obligation. This would mean that tax charged under Case II could not be collected by PAYE, even though there would in such circumstances be no practical difficulty in operating the system. Indeed, as your Lordships know, Oceanic itself operates PAYE in respect of personnel C employed by it in the United Kingdom.

Schedule E contains the territorial limitations upon the charge to tax. The only question is to determine in what circumstances the tax may be collected by PAYE. This question can be answered by invoking an old principle, even though to-day it has a new name. The "tax presence" for which the Crown contends signifies no more and no less than that the foreigner in question, i.e. D the employer who makes the payment on account of wages or salary, has by coming into this country made himself subject to United Kingdom jurisdiction: or, as Cotton L.J. in ex parte *Blain, supra*(1), put it, he has for the time being brought himself within the allegiance of the legislating power.

My Lords, it has been repeatedly, and correctly, asserted in argument that this appeal is not concerned with the charge to tax. Indeed, it is conceded that E the income tax upon which the Revenue seeks to collect by PAYE, is chargeable under Schedule E. Residence of the taxpayer is, of course, one of the factors determining chargeability to tax. But the present case is concerned with the territorial limitation to be implied into a section which establishes a method of tax collection. The method is to require the person paying the income to deduct it from his payments and account for it to the Revenue. The F only critical factor, so far as collection is concerned, is whether in the circumstances it can be made effective. A trading presence in the United Kingdom will suffice.

Upon the facts of this case a trading presence is made out. For the purposes of corporation tax Oceanic, it is agreed, carries on a trade in the United Kingdom which includes its operations in the United Kingdom sector G of the North Sea. For the purpose of this trade it employs a work force in that sector, whose earnings are assessable to British income tax. Finally, Oceanic does have an address for service in the United Kingdom. It is not the least surprising that the Special Commissioners concluded that in Oceanic's case there would be no practical difficulties in operating PAYE. For these reasons I conclude that Oceanic by its trading operations within the United Kingdom H and in the United Kingdom sector of the North Sea has subjected itself to the liability to operate PAYE in respect of those emoluments of its employees which are by s 38(6) of the 1973 Act chargeable to British income tax. Oceanic must, therefore, operate PAYE in respect of those emoluments.

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(1) (1879) 12 Ch D 522.

For these reasons I would allow the appeal and restore the order of the Judge. The Respondent must pay the Appellant's costs in your Lordships' House, in the Court of Appeal and before the Judge.

**Lord Wilberforce**—My Lords, the issue in this appeal is whether the Respondent company is obliged to operate the United Kingdom PAYE system of tax collection by deducting tax from the wages of those of its employees who are engaged in exploration or exploitation activities in the United Kingdom sector of the North Sea. The Respondent company is a foreign company incorporated in Panama; it is wholly controlled by the United States company whose main place of business is in the state of Louisiana. It claims that because it is neither a United Kingdom company nor "resident" in the United Kingdom it is not obliged to operate the PAYE system.

The Special Commissioners have found a number of detailed facts concerning the Respondent's business and operations. It conducts certain operations in the United Kingdom, at Wembley, Aberdeen and Inverness, but this appeal does not relate to the company's employees in those places. Its North Sea operations consist, *inter alia,* of pipe-laying both in the United Kingdom sector and in other sectors; they are controlled from Antwerp, Belgium. It employs United Kingdom nationals as well as citizens of other countries; some, if not all, of the former are resident and ordinarily resident in the United Kingdom. Though I do not think that these facts are material, they are, in fact, employed under contracts not governed by English or Scottish law; they are paid abroad and in foreign currency. It is not disputed that the Respondent company's employees in the United Kingdom sector of the North Sea are liable to United Kingdom income tax under Schedule E in respect of their pay for duties performed in that sector. But the Respondent company contends that they are not liable to have tax deducted from their pay by their employer.

The statutory scheme of deduction of tax from wages took shape in the Second World War, and was restated in the Income Tax Act 1952. The operative provision is now s 204(1) of the Income and Corporation Taxes Act 1970 which I reproduce:

> "On the making of any payment of, or on account of, any income assessable to income tax under Schedule E, income tax shall, subject to and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the income and notwithstanding that the income is in whole or in part income for some year of assessment other than the year during which the payment is made."

It is obvious that this section is expressed in general and unqualified terms sufficient to apply to the Respondent company unless it can be qualified or cut down in some way. Subsection (2) provides for the making of regulations by the Board with respect to the assessment, charge, collection and recovery of tax in respect of all income "assessable thereto under Schedule E" and provides that any such regulations shall have effect notwithstanding anything in the Income Tax Acts. It is under this subsection that the now familiar tax tables are made applicable as regards deduction of tax. In the present connection it is important to notice that the regulations may provide for the production to and inspection by tax officers of wages sheets and other documents so that they may satisfy themselves that tax has been correctly

deducted and accounted for. The Regulations (S.I. 1973 No. 334) are of an A
extremely detailed character amounting almost to a comprehensive code of provisions which, if the Crown's contentions are correct, would have to be complied with by the Respondent company. As regards records, it would be obliged (Regn 32) to produce at its premises all wages sheets, deduction cards and other documents and records whatsoever relating to the calculation or payment of the emoluments of its employees. By virtue of s 98 of the Taxes B
Management Act 1970, which expressly refers to these regulations, failure to comply with these obligations may attract a penalty.

The effect of all these provisions is (a) that income tax is imposed on wages, not primarily on the wage earner, (b) that the tax is collectable by deduction by the employer who then becomes a statutory debtor in respect of it to the Revenue; (c) that as a fall-back, provision is made for direct assessment, C
where necessary, upon the employee.

As to the United Kingdom sector of the North Sea, the legal position is as follows. Under the Continental Shelf Act 1964 an area may be designated by Order in Council as one in which rights with respect to the seabed and subsoil of the North Sea and their natural resources may be exercised by the United Kingdom. The United Kingdom sector is an area which has been so designated: D
its designation does not, of course, make it part of the United Kingdom. However, there are statutory provisions regarding the application of United Kingdom income tax law in this area.

(1) Under s 38(6) of the Finance Act 1973 any emoluments from employment in respect of duties there performed in connection with exploration or exploitation activities (for this expression see s 38(2)(*b*)) are to E
be treated for purposes of income tax as emoluments in respect of duties performed in the United Kingdom. This admittedly applies to the activities of the Respondent company, so that their employees in the sector are chargeable to income tax under Schedule E Case II in respect of their emoluments. (2) Section 38(4) of the same Act applies as regards the profits or gains of persons (including companies) operating in the area. I must quote it: F

> "Any profits or gains arising to any person not resident in the United Kingdom from exploration or exploitation activities carried on in the United Kingdom or in a designated area or from exploration or exploitation rights, and any gains accruing to such a person on the disposal of such rights shall, for the purposes of corporation tax or capital gains tax, be treated as profits or gains of a trade, or gains accruing on the G
> disposal of assets used for the purposes of a trade, carried on by that person in the United Kingdom through a branch or agency."

I regard this subsection as critical in this appeal. It quite clearly brings the Respondent company within the net of United Kingdom corporation tax in respect of its profits from its activities (exploration or exploitation) in the United Kingdom sector. It does so by treating the Respondent as carrying on H
its trade through a branch or agency in the United Kingdom. This brings it within the taxing provision of s 246 of the Act of 1970 which states the tax position of companies not resident in the United Kingdom. Again I must cite subss (1) and (2):

> "(1) A company not resident in the United Kingdom shall not be within the charge to corporation tax unless it carries on a trade in the I
> United Kingdom through a branch or agency but, if it does so, it shall, subject to any exceptions provided for by the Corporation Tax Acts, be

chargeable to corporation tax on all its chargeable profits wherever arising. (2) For purposes of corporation tax the chargeable profits of a company not resident in the United Kingdom but carrying on a trade there through a branch or agency shall be—(*a*) any trading income arising directly or indirectly through or from the branch or agency, and any income from property or rights used by, or held by or for, the branch or agency (but so that this paragraph shall not include distributions received from companies resident in the United Kingdom."

The combination of subss (2)(*a*) with s 38(4) of the Act of 1973 clearly makes the Respondent chargeable to United Kingdom corporation tax in respect of the profits or gains of its North Sea operations, and since it has a registered address in the United Kingdom in compliance with s 407 of the Companies Act 1948, this tax can be enforced against it.

Returning to s 204 of the Act of 1970, the Respondent company's contention is that though expressed in general terms, it must be limited in some way, limited, it suggests, by reference to the territorial principles of legislation. There is no doubt of the existence of such a general principle. "English legislation is primarily territorial" (*per* the Earl of Halsbury in *Cooke* v. *Charles A. Vogeler Company* [1901] AC 192, at page 107) or "*prima facie territorial*" (*per* Brett L.J. in Ex parte *Blain* (1879) 12 Ch D 522, at page 526). And the principle was expanded in the same case by James L.J. in often quoted words. There is, he said a

> "broad, general, universal principal that English legislation, unless the contrary is expressly enacted or so plainly implied as to make it the duty of an English Court to give effect to an English statute, is applicable only to English subjects or to foreigners who by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction....But, if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English legislature could have ever intended to make such a man subject to particular English legislation."

Lord Herschell applied this principle to income tax in *Colquhoun* v *Brooks*([1]) (1889) 14 App Cas 493, at page 504 in these words: "The Income Tax Acts, however, themselves impose a territorial limit, either that from which the taxable income is derived must be situate in the United Kingdom or the person whose income is to be taxed must be resident there". This was a simple statement about liability to pay income tax and as such is still broadly correct. But since 1889 many extensions have been made in the law, and successive statutes must be examined to see what limit has been imposed in particular cases.

The Respondent company contends, and the Court of Appeal has held, that the provisions regarding collection of tax by deduction from wages can never have been intended to apply to a foreign company, non-resident in the United Kingdom, which makes payments outside the United Kingdom.

In my opinion this contention is erroneous, because it is based upon a mistaken application or understanding of the "territorial principle". That principle, which is really a rule of construction of statutes expressed in general terms, and which as James L.J. said a "broad principle", requires an inquiry

([1]) 2 TC 490.

to be made as to the persons with respect to whom Parliament is presumed, in the particular case, to be legislating.

Who, it is to be asked, is within the legislative grasp, or intendment, of the statute under consideration? The contention being that, as regards companies, the statute cannot have been intended to apply to them if they are non-resident, one asks immediately—why not?

As regards companies, non-residence in the United Kingdom is not the relevant criterion for freedom from corporation tax. That is not surprising given the difficulty of ascertaining where they do reside. The classic test, laid down judicially (and see s 482(7) of the Act of 1970 for its adoption in a context other than the present) is where its central management and control actually resides, or, in more homely language where it really keeps house and does its real business (*De Beers Consolidated Mines, Ltd.* v. *Howe*[1]) [1906] AC 455 *per* Lord Loreburn L.C.). That, with companies such as the Respondent, may be difficult to fix. So the tax legislation (s 246(1)) adopts the test of carrying on a trade in the United Kingdom through a branch or agency, and it taxes any trading income arising directly or indirectly through or from the branch or agency. The link with the respondent company is firmly made through s 38(4) of the Finance Act 1973. I quote at this point the finding of the Special Commissioners:

> "(2) Oceanic's operations extend throughout the world, including the Middle East, the Far East, Africa and Central and Southern America. Oceanic is not resident for tax purposes in the United Kingdom. It does, however, have a permanent establishment on the United Kingdom mainland and [i.e. but] is liable to United Kingdom corporation tax on its profits from activities in the United Kingdom and the United Kingdom continental shelf, all of which are taxed as a single trade. It is an overseas company to which s 407 of the Companies Act 1948 applies and has complied with the requirements of that section. Its address for service in Great Britain is McDermott House, 140 Wembley Park Drive, Wembley, HA9 7DG."

So, the question one has to ask in relation to s 204 is this: why should not this section apply to a company which, as regards the very activities to which the section relates, is itself made subject to United Kingdom tax legislation. Why not more particularly, when the employees, to whom the question relates, are employed on precisely those activities, so that the wages they are paid, which are treated as being in respect of duties performed in the United Kingdom, enter into the trading accounts of the company? To the answering of this question non-residence is quite immaterial, as, indeed, s 246 itself shows; it disregards non-residence or, perhaps more accurately it makes "non-residence" a condition of liability and fastens upon trading through a branch or agency. This provides a clear, and surely satisfactory, answer to the question of construction of s 204, so that this section only applies to those companies which are within the taxing provisions of s 246. As to such companies s 246 provides a convincing reason why the Respondent company should be liable to operate the PAYE system. I should add that, as the company has an address for service in the United Kingdom, the liability can be enforced against assets here.

This was the conclusion reached in the High Court by Dillon J., by a process of similar, if not quite identical, reasoning to that which I have tried to express. I agree with it and would restore his judgment.

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[1] 5 TC 198.

A In this House, Mr. Potter for the Crown put forward an alternative argument. That was really his first choice, not, I suspect because he considered it more persuasive, but because of the very attractive consequences for the Crown which its success would entail. It was to say, quite boldly, that s 204 should be read according to its terms: that if (and he accepted this) some limitation ought to be imposed upon it, upon the "territorial principle", that
B was sufficiently achieved through its link with Schedule E of the Income and Corporation Taxes Act 1970, to which this section expressly refers. Schedule E itself contains a clear territorial test, or rather territorial tests: whether the employee "is resident and ordinarily resident in the United Kingdom" (Case I) or his emoluments are "in respect of duties performed in the United Kingdom" (Case II). So the reference in s 204 to Schedule E has the effect of
C introducing the necessary territorial principle into the section, which can, subject thereto, be given general application.

This is an ingenious argument which at one time attracted me. It has very far-reaching consequences, since it imposes upon companies which, as regards their income, are not in any way subject to the United Kingdom tax laws, and which may not be capable of being served with process here, very extensive
D obligations, with sanctions attached to them. Some of the consequences involved are painted in bright colours in the judgments of the Court of Appeal. Mr. Potter did not shrink from accepting these consequences, pointing out that in most cases they would simply be unenforceable and that there are parallels elsewhere in tax legislation for general provisions which in individual cases cannot be enforced.

E Nevertheless I do shrink from them when there is a safer route to take; an unenforceable obligation is still an obligation which may be onerous; the existence of it may have a deterrent effect upon the employment of United Kingdom residents. I shrink from it all the more since I am not convinced that the argument for it is sound. The expressed limitation in s 204 to Schedule E is a limitation as to its subject matter, i.e. it only applies to certain emoluments:
F it is a *necessary* condition for the section to apply that the emoluments should be taxable under Schedule E. But it seems to me that it may leave open the different question, which is what we are concerned with, namely, to *whom* the section is to apply. The Schedule E limitation may, in fact, not be a *sufficient* condition. I am therefore, as at present advised, unwilling to accept the argument.

G I would allow the appeal.

**Lord Edmund-Davies**—My Lords, this appeal relates to the construction of s 204(1) of the Income and Corporation Taxes Act 1970, the relevant parts of which provide that,

> "On the making of any payment of, or on account of, any income assessable to income tax under Schedule E, income tax shall, subject to
> H and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment..."

As far as the Respondent company is concerned, your Lordships are therefore not concerned with liability to be taxed, but with the quite different question of whether in the circumstances of this case they are under a duty to deduct income tax from emoluments assessable under Schedule E paid by them to
I certain of their employees.

The relevant facts have been set out by Dillon J. ([1981] 1 WLR 59, at page 61)([1]), Lawton L.J. ([1982] 1 WLR 222)([2]) and by other of your Lordships, and I shall not repeat them. It is common ground that some of the employees of the Respondent in its North Sea Divison who worked on barges in the United Kingdom sector of the North Sea (a "designated area" within s 38 of the Finance Act 1973) were assessable within Schedule E. A

The primary submission of the Crown in this appeal from the unanimous decision of the Court of Appeal is that those simple facts are in themselves sufficient to bring the Respondent within s 204(1). The submission involves the rejection as irrelevant of the further facts that the Respondent is incorporated under the law of Panama and (as the Special Commissioners found) is not resident for tax purposes in the United Kingdom, and that the relevant payments of emoluments were made by the Respondents in Brussels in United States dollars by cheques drawn on their New York bank account. B C

My Lords, there are two rules or guides to the construction of s 204(1) which have to be borne in mind: (1) the rule relating to extra-territoriality and (2) the rule relating to penal statutes. As to (1), Dr. Lushington said in *The Amalia* ((1863) 1 Moore P.C. (N.S.) 471, at 474): "...the British Parliament has no proper authority to legislate for foreigners out of the jurisdiction, unless the words of the statute are perfectly clear." This statement of principle has been judicially followed on innumerable occasions. The important decision in Ex parte *Blain* (1879) 12 Ch D 522, C.A. has been closely considered below and by others of your Lordships, and it is therefore sufficient to recall also that in *Attorney General for Alberta* v. *Huggard Assets Ltd.* [1953] AC 420 Lord Asquith of Bishopstone said (at page 441): "An Act of the Imperial Parliament today, unless it provides otherwise, applies to the whole of the United Kingdom and to nothing outside the United Kingdom: not even to the Channel Islands or the Isle of Man, let alone to a remote overseas colony or possession." As to (2), "A citizen is not to be taxed unless he is designated in clear terms by the taxing Act as a taxpayer ..." (*Vestey* v. *Commissioners of Inland Revenue*([3]) [1980] STC 10, *per* Lord Wilberforce at page 18). And in *Tuck & Son* v. *Priester* (1887) 19 QBD 629 Lord Esher M.R., said (at page 638): "If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections." My Lords, s 204 is a penal section, and the Crown here seeks to apply it extra-territorially, in the words of Brightman L.J., as he then was, at page 231 G([4]), "...a foreign employer, resident abroad, paying emoluments in foreign currency outside the United Kingdom to an employee in respect of duties performed outside the United Kingdom". As to its penal nature, not only is s 204 part of a taxing statute, but the Income Tax (Employments) Regulations 1973 No. 334, made by the Board of Inland Revenue under the section, impose by Regn 26 a narrow time-limit within which the employer must pay over to the Collector all the tax deducted by him from employees' emoluments; Regulation 27 provides for the rendering by the employer of elaborate returns; Regulation 28 empowers the Collector to sue the employer personally for the tax he was liable to deduct; and Regn 32 obliges the employer to produce at his premises for inspection by an authorised officer all wages sheets, deduction cards and other documents. Furthermore, s 98 of the Taxes Management Act 1970 provides for the D E F G H I

([1]) Page 195 *ante*. ([2]) Page 201 *ante*. ([3]) 54 TC 503, at p581.
([4]) [1982] 1 WLR 222; page 207 *ante*.

imposition of monetary penalties in respect of failure to comply with any of the foregoing Regulations, and s 100(7) empowers Commissioners to summon defaulters to appear before them at a specified time and place for summary hearing of informations laid against them. The duty of discharging the burden of deducting, while not impossible, could thus well prove onerous and expensive (for no remuneration will be forthcoming), and the consequences of default are undoubtedly penal in character.

It is true that s 204 itself contains no express territorial limitation, but so to approach the problem is in my judgment wrong and irreconcilable with the observation of Lord Esher M.R. in *Colquhoun* v. *Heddon*[1] (1890) 25 QB 129, at page 134 that, "... unless Parliament expressly declares otherwise,.... Parliament (unless it expressly declares otherwise) when it uses general words is only dealing with persons or things over which it has properly jurisdiction." The proper approach is to ask whether it has been manifested that despite the absence of express words giving the section an extra-territorial application, it can operate against this Respondent. My judgment is that, it cannot, and that the contrary conclusion arrived at by adverting simply to the wide compass of the *charging* provisions contained in s 181 must be rejected. On this part of the appeal I am accordingly in respectful concurrence with my noble and learned friend Lord Scarman.

The Crown then launch, in the alternative, a narrower attack on the decisions of the Special Commissioners and the Court of Appeal in favour of the Respondent. They assert, in effect, that it is unrealistic to regard the Respondent as merely a foreign company. They invoke the references in Ex parte *Blain*[2] (*ante*) by James L.J. to "foreigners who by coming into this country, whether for a long or a short time, having made themselves during that time subject to English jurisdiction", and by Brett L.J. in the same case to "the subjects of other countries who for the time being bring themselves within the allegiance of the legislating power", and then attempt to demonstrate that the Respondent comes within those tests.

Relying solely upon s 38(6) of the Finance Act 1973, Dillon J. agreed with that submission. It was expansively considered in the Court of Appeal and unanimously rejected. I understand my noble and learned friend Lord Scarman to be of a like mind, and I respectfully adopt his summation that, "Once the conclusion is reached that not all income assessable to Schedule E is subject to collection by PAYE [section 38 (6)] cannot be decisive as to the formulation of the section 204 liability".

The majority of your Lordships are nevertheless of the opinion that this appeal should be allowed. Accepting the finding of the Special Commissioners that the Respondent is not resident in the United Kingdom, the opinion is expressed that this is immaterial, and that it is sufficient if a company has a "tax presence" here. My noble and learned friend Lord Wilberforce regards s 38(4) of the Finance Act 1973 as "critical in this appeal", but the whole section makes purely charging provisions in respect of income tax, capital gains tax and corporation tax, subs (4) having reference only to the two latter categories of tax. Granted that the activities of the Respondent, with its design office at Wembley, its fabrication yard near Inverness, and its Aberdeen branch constitute carrying on a trade "in the United Kingdom through a branch or agency" within the meaning of the subsection, I respectfully find if difficult to

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[1] 2 TC 621. [2] (1879) 12 Ch D 522.

appreciate the bearing of that conclusion on the application of s 204 of the A
1970 Act to emoluments paid abroad to employees of the North Sea Division with headquarters in Brussels and an operational centre in Antwerp. Nor am I assisted by the knowledge that the Respondent also comes within the provisions as to the charging of corporation tax contained in s 246 of that same Act, any more than I am by the undoubted fact that this overseas company has complied with s 407 of the Companies Act 1948 by having a London address B
for service.

My Lords, the concept of a "taxable presence" was described by Mr. Heyworth Talbot Q.C., as "unknown to income tax law", and as "appearing nowhere in the Income Tax Acts; though it can have some significance in relation to residence, it it otherwise irrelevant". No case cited to this House has convinced me that this submission was wrong. And even had persuasion C
been induced, it would still not have served, in my judgment, to establish that personal chargeability to tax has any rational or legal connection with a duty to make deductions in respect of the chargeability of others. This would doubtless be highly convenient to the Crown, but that is nothing to the point.

In these circumstances, I am not persuaded that the Court of Appeal arrived at a wrong conclusion, and for my part I would therefore dismiss the D
appeal.

**Lord Lowry**—My Lords, the facts and the relevant statutory provisions have been set out in certain of your Lordships' speeches, which I have had the opportunity of reading in draft, and in the judgments delivered in the Court below. My conclusion agrees with that of my noble and learned friend, Lord Edmund-Davies, which supports the judgments of the Court of Appeal and E
the opinion of the Special Commissioners. Having regard to the different opinions to which the facts have led this House and the Courts which have already considered the problem, I wish to state quite shortly the reasons for my view.

The first argument presented to your Lordships by the Appellant was that, whenever Schedule E applied to a taxpayer's income, s 204 (1) of the F
Income and Corporation Taxes Act 1970 imposed a duty on the employer, whether individual or corporate, even when the employer was not resident in or connected with the United Kingdom and the taxpayer's work was performed and paid for outside the United Kingdom, of deducting the tax which was payable and accounting for it to the Revenue.

This argument has not actually achieved acceptance at any judicial level, G
although, as your Lordships' opinions confirm, it received an attentive hearing in this House and I, too, confess to having been at one stage attracted by its simplicity.

According to the literal meaning of s 204(1), the company is bound to operate PAYE, as claimed. In the ordinary way, therefore, the company would have to produce a *special* argument based on the 1970 Act for saying H
that s 204(1) does not mean what it says. But that is not so here, because the company can rely on a *general* argument, which I shall refer to as the territorial principle, according to which there is a presumption against applying statutory provisions outside the United Kingdom to persons who are not resident there. The authorities illustrating the territorial principle, which is simply a rule of construction, have already been cited to and by your I
Lordships and I do not need to go over them again. Their effect, as seems to be

A accepted by the Appellant, is to cast on him the burden of showing, by
reference to express enactment or clear implication, that s 204(1) does apply.
Thus, to distinguish the usual situation when one is confronted with the
ordinary and natural meaning of words in a statute, the quest is not on behalf
of the company for a means of escape from the ordinary and natural meaning,
but on behalf of the Appellant for an indication to overcome expressly or by
B implication the territorial principle. The Appellant claimed—and at first I
thought his claim might be a good one—that the indication in his favour was
provided by s 181(1) of the 1970 Act, which gives *territorial* clues to the
chargeability of the taxpayer under Schedule E. But, on reflection, I cannot at
all subscribe to the view that the presence of territorial provisions in s 181(1)
relating to the income of taxpayers serves to destroy the implied limitations
C relating to their employers outside the United Kingdom which the territorial
principle has imposed on s 204(1).

There is no other support for what Brightman L.J. called, at [1982] 1
WLR 222, at page 233D([1]), "The argument of the Crown for a worldwide
application of section 204" which could offset the territorial principle; this
appears clearly from your Lordships' speeches, the judgments of the Court of
D Appeal and Dillon J. and the decision of the Special Commissioners. I would
sum up my remarks on it by quoting the observations of the learned Lord
Justice, as he then was, at page 232C([2]):

> "The taxpayer company has made payments of income assessable to
> income tax under Schedule E. Therefore in terms section 204 applies to
> the taxpayer company. But such a simplistic construction flies in the face
> E of the principle, laid down notably in *Ex parte Blain*, 12 Ch. D. 522, and
> echoed in numerous later cases, that 'English legislation is primarily
> territorial'; 'a broad substantial rule' which the Earl of Halsbury L.C.
> said in *Cooke* v. *Charles A. Vogeler Co.* [1901] A.C. 102, 197, he 'should
> be sorry to see departed from'."

The Appellant's second argument was, as my noble and learned friend,
F Lord Scarman, has put it, that the company has, by reason of its operations
and trading activities in the United Kingdom and in the North Sea, a sufficient
presence in, or connection with, the United Kingdom to justify the Revenue's
requirement that it operate PAYE in respect of the earnings of the personnel it
employs in the United Kingdom sector of the North Sea. Here again, my
Lords, I would say that the reasons given by my noble and learned freind,
G Lord Edmund-Davies, for rejecting the Appellants first argument are equally
cogent and formidable obstacles to accepting the second. I also respectfully
consider that his further citations of authority are most persuasive.

Recalling that the United Kingdom sector is nowhere deemed to be part of
the United Kingdom, I remind myself that the framers and promoters of the
tax legislation must be taken to know very well the high authority and long
H standing of the cases, including tax cases, on the territorial principle. That is
the background against which to judge whether the legislature has made it
clear that s 204(1) reaches the company in the present case. And, once the
territorial principle is admitted to be relevant, it is not a question of how or to
what extent one can qualify or cut down the operation of s 204(1), but of how

([1]) Page 208 *ante*. ([2]) Page 207 *ante*.

and to what extent one can widen the operation of s 204(1) beyond the limited sphere of influence to which that principle has *prima facie* confined it.

If he loses the "worldwide" argument, I do not consider that the Appellant can find a half-way house, or a safe anchorage in the North Sea, based on his alternative, and I can think of only three ways for him to present it.

(1) The first, my Lords, which has the attraction of simplicity and, though not specifically advanced by the Crown, was adopted by Dillon J., is to say that the words in s 38(6) of the 1973 Act, "for the purposes of income tax", mean for all such purposes, so that the subsection is viewed not only as a charging provision but as referring to the purposes of tax collection. At this point I follow my noble and learned friend, Lord Edmund-Davies in adopting the statement of my nobel and learned friend, Lord Scarman, who expressed himself as agreeing with the Court of Appeal that([1]):

> "the effect of the subsection is merely to render income earned in respect of duties performed in the United Kingdom sector of the North Sea assessable under Schedule E. Once the conclusion is reached that not all the income assessable to Schedule E is subject to collection by PAYE, it cannot be decisive as to the formulation of the s 204 liability."

I do not forget that Lord Scarman continued:

> "it remains, however, an important indication. It goes some way towards establishing a company's presence in the United Kingdom in that the duties performed by a company's employees in the United Kingdom sector of the North Sea are to be treated for the purposes of income tax as performed within the United Kingdom."

But I must respectfully insist that there is no in-between meaning to be assigned to the words, "for the purposes of income tax". We must either accept the meaning preferred by Dillon J. (in which case the Crown have no problem) or confine the purposes mentioned in s 38(6) to those of assessment and chargeability.

My Lords, in my opinion, s 38(6), which contains a clear echo of the words of Case II, is neutral and does not provide the indication which the Appellant needs in order to overcome the territorial principle. This view has commended itself not only to the Judges of the Court of Appeal but, it seems, to your Lordships as well.

(2) The second way of putting the alternative argument is to say that the company had a sufficient "tax presence" in the United Kingdom to justify imposing on it the duty of tax collection under s 204 in respect of emoluments earned by the company's employees in the United Kingdom sector of the North Sea. Your Lordships will recognise that this contention accepts the operation of the territorial principle but seeks to say that it has been satisifed. Mr Heyworth Talbot, for the company, in the course of a persuasive and cogent submission, ridiculed the concept of tax presence (in contrast to residence) as a means of attracting liability to the company. His criticism went too far, in my respectful opinion; after all, the liability to deduct tax in respect of the Wembley and Aberdeen employees does not depend on residence. But the tax presence, to be effective, must be tax presence *in the United Kingdom*.

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([1]) Page 223 *ante*.

A Let me therefore consider the nature of the alleged tax presence on which the Appellant relies.

I do not believe that anyone has suggested, or could credibly suggest, that the employment of staff at Wembley, Aberdeen and Inverness or the furnishing of a United Kingdom address for service would oblige an American company employing a United Kingdom resident in New York to deduct PAYE
B tax, unless that company were already liable to do so by virtue of the Appellant's "worldwide" argument: the tax presence, to be effective, must be relevant to the income in question, and not merely coincidental. Nor is it logical to rely on the kind of tax presence I have mentioned for the purpose of imposing on the company here the duty of deducting tax from United Kingdom sector earnings, if that duty would not otherwise exist. Neither can s
C 38(6) be prayed in aid. As your Lordships have seen, that provision simply requires earnings in a designated area (i.e. the United Kingdom sector) to be treated *for the purposes of income tax* as emoluments in respect of duties performed in the United Kingdom; but the designated area is not part of the United Kingdom, and an employer who is operating there cannot be said, in the words of Ex parte *Blain*(1) to have "come to this country".

D I agree that residence is not the criterion of amenability to our laws, but, once that criterion is rejected, a satisfactory alternative on the facts of each case must be found before it can be validly argued that the territorial principle has been complied with. A certain vagueness at this point of the Appellant's otherwise precise and crisp submissions led me to the conclusion that the tax presence relied on was specious. The Appellant must still face the fact that, so
E far as the designated areas are concerned, the company has not "come into the United Kingdom and thereby made itself subject to United Kingdom jurisdiction".

(3) The third way of putting the Appellant's alternative argument relies on s 38(4) of the 1973 Act and s 246 of the 1970 Act and has been clearly set out in the speech of my noble and learned friend, Lord Wilberforce. As he says, s
F 38(4) brings the company within the net of United Kingdom corporation tax in respect of its profits from its activities in the United Kingdom sector. My noble and learned friend further points out that the liability to corporation tax can be enforced against the company because it has a registered address in the United Kingdom in compliance with s 407 of the Companies Act 1948. It is not, of course, suggested that the need to have a registered address here has
G arisen from the activities in the United Kingdom sector. Lord Wilberforce also states, as I respectfully accept, that non-residence is not the relevant criterion for freedom from corporation tax. But, equally respectfully, I would observe that, failing residence, Parliament has *expressly* enacted a test of chargeability, namely, s 246, and has also *expressly*, by s 38(4) extended that chargeability to the designated areas. Therefore it is quite right that the company is by s 38(4)
H made subject to United Kingdom tax legislation, specifically by making it liable for capital gains tax and corporation tax on profits or gains arising from activities in a designated area, but it does not, in my opinion, follow that the company is thereby impliedly made liable to deduct Schedule E tax under s 204(1) from the earnings of those whom it employs in those activities. Furthermore, I do not consider that the Appellant can, in support of this

(1) (1879) 12 Ch D 522.

particular argument, soundly rely on the company's United Kingdom address A
for service.

On this part of the case I would again express my respectful concurrence in everything which my noble and learned friend, Lord Edmund-Davies, has said. I believe that, as he observes, there is nothing to establish that personal chargeability (expressly imposed, I may add) has any rational or legal connection with a duty (allegedly created by implication) to make deductions B
in respect of the chargeability of others. Indeed, I cannot see that the argument based on s 38(4), although different, is any stronger than that based on s 38(6).

Whichever branch of the argument one looks at, the same practical difficulties exist as were described in detail in the judgment of Lawton L.J. I agree that the difficulty, or even the impossibility, or enforcement does not provide a bar to accepting the Appellant's interpretation, but the making of C
that concession does not give the Crown a good case if they have not one already.

When I finally come back to re-read the judgments of a distinguished Court of Appeal in the cold light of reason, I conclude that they cannot be faulted on any aspect of the case.

Accordingly, my Lords, I would dismiss the appeal. D

**Lord Roskill**—My Lords, I have had the advantage of reading in draft the speeches of my noble and learned friends Lord Scarman and Lord Wilberforce. Like them I would allow this appeal for the reasons which they give. Like my noble and learned friend Lord Wilberforce I was for a long time attracted, and I still am attracted, by the alternative argument advanced by Mr. Potter Q.C. for the Crown though I am very conscious of the E
consequences if that argument were accepted. I am still not wholly persuaded that that argument is unsound but like my noble and learned friend I shrink from accepting it when, as he states a safer route exists. I therefore see no useful purpose in considering the alternative argument further.

*Appeal allowed, with costs.*

[Solicitors:—Messrs. Slaughter & May; Solicitor of Inland Revenue.] F

Printed for Her Majesty's Stationery Office by Commercial Colour Press, London E7. 10/85, C53, Dd.737314.