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Case summary

Case ID

UKSC/2023/0101

Parties

Appellant(s)

Commissioners for His Majesty's Revenue and Customs

Respondent(s)

Royal Bank of Canada

Issue

Is UK corporation tax payable on certain sums received by the respondent during its accounting periods ended 31 October 2008 to 2015 inclusive?

Facts

Royal Bank of Canada ("RBC") (the respondent) is a bank based in Canada. In the early 1980s, RBC advanced a loan of CAD 540 million Canadian Dollars to Sulpetro Limited ("Sulpetro"), a Canadian oil company. Sulpetro (UK), a wholly owned subsidiary of Sulpetro, was granted a licence ("the Licence") by the UK government to participate with others in exploring a particular section of the North Sea Continental Shelf known as the Buchan field. Under an agreement between Sulpetro and Sulpetro (UK), Sulpetro provided all the money and expertise needed to carry out the work. In exchange Sulpetro received all of Sulpetro (UK)'s share of the oil found. Sulpetro could then sell that oil to recoup its investment. In 1986 Sulpetro sold its interest in the Buchan field to BP Petroleum Development Limited ("BP"), including the share capital in Sulpetro (UK) and the rights that Sulpetro had under its agreement with Sulpetro (UK) to any oil acquired from the Buchan Field. In return, BP promised to make payments to Sulpetro calculated by reference to the volume of oil BP acquired once the price at which that oil could be sold by BP rose above a certain level ("the Payments"). In broad terms, the Payments were payable when the market price per barrel of oil exceeded USD 20. Ultimately, Sulpetro was unable to repay its loan to RBC, and in 1987 RBC appointed a receiver and, by a court order made in 1993, the right to receive the Payments was assigned to RBC. BP subsequently sold its interest in the Buchan field to Talisman Energy Inc., which assumed the obligation to make the Payments. RBC treated the Payments it received from BP as income of its banking business in Canada and accounted for it as a partial recovery of the bad debt it had recognised in respect of its loan to Sulpetro. It did not report the Payments in its UK tax return. HMRC (the appellant) became aware of the Payments in 2014 and determined they were chargeable to UK corporation tax. It subsequently issued assessments and closure notices to RBC for the accounting periods 2008-2017 on the basis that RBC was liable to pay corporation tax on the Payments as profits of a "ring-fenced" oil trade regime. RBC unsuccessfully appealed against the assessments and closure notices to the First-tier Tribunal. The Upper Tribunal dismissed RBC's further appeal. RBC appealed to the Court of Appeal, which overturned the lower courts' decisions. HMRC now appeals to the Supreme Court.

Date of issue

3 August 2023

Judgment appealed [\[2023\] EWCA Civ 695](#)

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