

# UK Tax Does Not Arise on Payments to Canadian Company, UK Court of Appeal Rules

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The United Kingdom's Court of Appeal has published its decision in *Royal Bank Of Canada v The Commissioners For His Majesty's Revenue And Customs* [\[2023\] EWCA Civ 695](#). Details of the decision are summarized below.

(a) Facts. Royal Bank of Canada (RBC) had made a loan of Canadian Dollars (CAD) 540 million to Sulpetro Limited, a Canadian oil exploration and exploitation company. It carried on business in the UK North Sea where a licence had been granted by the UK government to Sulpetro's UK subsidiary Sulpetro (UK) Limited (SUKL). Sulpetro Limited agreed to fund the development and exploitation costs, for which it would receive an income share. A payment would be due to Sulpetro if the price of a barrel of oil (less specific expenses) exceeded a specified amount. In 1985, Sulpetro was in financial difficulties and sold its interest in the oil field to BP Petroleum Development Limited (a UK company) in 1986. BP's interest was transferred to another UK company, Talisman Energy Inc. In 1993, Sulpetro went into receivership and the royalty interest was assigned to RBC, which wrote off its loan to Sulpetro and treated the royalty receipts as recovery of that bad debt.

While auditing Talisman's corporation tax return, the UK tax authority, His Majesty's Revenue and Customs (HMRC), noticed that Talisman had treated the payments as deductible in calculating its UK ring-fence profits. HMRC issued discovery assessments on RBC for the years ended 31 October 2008 to 2015 resulting in tax of about GBP 19 million. RBC appealed against the assessments, but the First-tier Tribunal and Upper Tribunal upheld the corporation tax assessments. RBC appealed to the Court of Appeal.

(b) Issue. HMRC argued that the payments to RBC were immovable property within article 6(2) of the [Canada-United Kingdom Income Tax Treaty \(1978\)](#). This included "rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources".

For RBC, several arguments were advanced, including:

- article 7 of the Treaty precluded UK tax because the profits were not attributable to RBC's UK branch; and
- article 6 applied only to the rights of a grantor to receive payments from a grantee as consideration for the grant of a right to work mineral resources. Sulpetro never had a right to work those resources. Nor did it have a right to the benefit "of the oil", it was simply entitled to money calculated by reference to the price of oil.

(c) Decision. The Court of Appeal considered the licence agreement and the Treaty. It agreed that the best interpretation of the fifth limb of article 6 of the Treaty was that it is "confined to rights to payments held by a person who has some form of continuing interest in the land in question to which the rights can be attributed".

Although Sulpetro had the right to direct and receive benefit from the work in the North Sea, it was not actually carrying out the work and had no right to do this. This did not amount to a "right to work" required by the Treaty. That right was held by the UK subsidiary. Furthermore, the Treaty recognized the type of business structure used here because article 13(4)(a) would include the licence interest held by the subsidiary and article 13(4)(b) would apply to Sulpetro's "right to assets to be produced", namely the oil. Under article 13(5), any gain on the disposal of shares in a subsidiary owning a licence would also be taxable. However, the Treaty did not include the structure in this case.

The Court of Appeal concluded that RBC's appeals should be allowed and HMRC's assessments should be set aside.

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