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INTERNATIONAL TAX  
**CASE SUMMARY**

**ROYAL BANK OF CANADA VS  
UNITED KINGDOM**

FEBRUARY 2025

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# ACADEMY OF TAX LAW

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# HEAD OF ACADEMICS



Welcome to the Academy of Tax Law's case and judgment summaries. These documents have been carefully curated to support professionals, students, and researchers navigating the complex landscape of international tax and transfer pricing. At the Academy, we understand that tax law is ever-evolving, with key rulings continuously shaping its practice.

Each summary you'll find here is designed to provide not just the facts, but the context and implications of pivotal legal decisions. These case summaries are created to serve as a valuable resource for legal teams, multinationals, revenue authorities, and academics, offering insights that go beyond the surface. Our goal is to ensure you remain informed and prepared, whether you are dealing with tax planning, dispute resolution, or risk management.

We believe that knowledge is the foundation of sound decision-making, and with these resources, we hope to empower you in your professional journey. As you delve into the analysis, remember that staying ahead in tax law requires not just understanding the rules but how to apply them in a dynamic, global environment.

Thank you for choosing the Academy of Tax Law as your partner in this ongoing learning experience.

Sincerely,  
Dr. Daniel N Erasmus

# PART 1

# SUMMARY

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# JUDGEMENT SUMMARY

## CASE OVERVIEW

<b>Court:</b>	Supreme Court of the United Kingdom
<b>Case No:</b>	[2023] EWCA Civ 695
<b>Applicant:</b>	Royal Bank of Canada
<b>Defendant:</b>	Commissioners for His Majesty's Revenue and Customs
<b>Judgment Date:</b>	12 February 2025
<b>Full Judgment:</b>	<a href="#">CLICK FOR FULL JUDGMENT</a>
<b>View Online:</b>	<a href="#">CLICK TO VIEW SUMMARY ONLINE</a>

# JUDGMENT SUMMARY

This case examines whether payments received by the Royal Bank of Canada (RBC) under an oil exploration agreement were subject to UK taxation. The core issue concerns the interpretation of Article 6(2) of the UK/Canada Double Taxation Convention 1978, which governs the taxation of income derived from immovable property, including natural resources.

The case originates from Sulpetro Ltd, a Canadian corporation, which owned a subsidiary, Sulpetro (UK), licensed to explore and extract oil from the Buchan Field in the North Sea. In 1986, BP acquired Sulpetro's rights under a sale and purchase agreement (SPA), agreeing to make contingent payments based on oil prices ("the Payments"). RBC, as Sulpetro's creditor, later acquired the right to receive these Payments.

HMRC contended that these Payments fell under Article 6(2) of the UK/Canada Convention, allowing the UK to tax them. RBC challenged this, arguing

that the Payments were not consideration for "the right to work" the Buchan Field and were outside the UK's taxing jurisdiction.

The First-tier Tribunal and Upper Tribunal upheld HMRC's position. However, the Court of Appeal reversed this, ruling that the Payments did not arise from a "right to work" within the meaning of Article 6(2). HMRC appealed to the Supreme Court.

The Supreme Court upheld the Court of Appeal's decision, affirming that:

- The "right to work" under Article 6(2) refers to a direct operational entitlement, which Sulpetro never had.
- RBC's entitlement to the Payments was not in exchange for any such right.
- The UK/Canada Convention did not permit taxation of these Payments in the UK.

# KEY POINTS OF THE JUDGMENT

## BACKGROUND

The case concerns the taxation of payments received by the Royal Bank of Canada (RBC) under an oil exploration and extraction agreement related to the Buchan Field in the UK North Sea. The legal dispute arose from the allocation of taxing rights between the United Kingdom and Canada under the UK/Canada Double Taxation Convention (1978), particularly the interpretation of Article 6(2), which governs the taxation of income derived from immovable property, including natural resources.

The case originates from Sulpetro Ltd, a Canadian oil company, which held an interest in the Buchan Field through its wholly owned UK-incorporated subsidiary, Sulpetro (UK). Sulpetro (UK) had been granted a licence by the UK government to explore and extract oil. To fund the project, Sulpetro (Canada) provided all the financing and technical expertise required. The agreement between

Sulpetro and Sulpetro (UK) stipulated that all oil extracted by Sulpetro (UK) would belong to Sulpetro (Canada) in exchange for its funding.

In 1986, Sulpetro sold its interests in the Buchan Field to BP Petroleum Development Ltd (BP). As part of this transaction, BP agreed to make contingent payments to Sulpetro, calculated based on the volume of oil extracted and the prevailing market price. These payments (referred to as "the Payments") were to be made only when the price per barrel exceeded \$20 per barrel.

Following Sulpetro's financial difficulties, RBC, as Sulpetro's primary creditor, acquired the right to receive the Payments under a court order in 1993. RBC reported these Payments as income taxable in Canada, but HMRC argued that they were subject to UK tax under Article 6(2) of the UK/Canada Convention.

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# KEY POINTS

## OF THE JUDGMENT

### CORE DISPUTE

The fundamental legal issue in the case revolved around whether the Payments received by RBC fell within the scope of Article 6(2) of the UK/Canada Convention, which allows a country to tax income from immovable property, including natural resources. The dispute specifically focused on whether the Payments were made “as consideration for the working of, or the right to work” the Buchan Field, which would make them taxable in the UK.

#### HMRC’s Position

- HMRC argued that the Payments made by BP were directly connected to the right to extract oil from the Buchan Field.
- HMRC contended that Sulpetro (Canada) had economic ownership of the oil, and that by transferring its rights to BP, Sulpetro had effectively transferred a “right to work” the oil field.
- Therefore, under Article 6(2), the Payments should be taxed in the UK, as they arose

from UK-based immovable property.

#### RBC’s Position

- RBC argued that Sulpetro never possessed a “right to work” the Buchan Field because only Sulpetro (UK) held the government-issued licence for exploration and extraction.
- RBC contended that the Payments were merely a financial arrangement and not consideration for a “right to work” under Article 6(2).
- RBC also highlighted that the UK had no jurisdiction to tax the Payments, as they were income received by a Canadian entity and had been fully taxed in Canada.

The dispute thus centered on whether the economic arrangement between BP and Sulpetro was sufficient to create a taxable right to work under Article 6(2).

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# KEY POINTS

## OF THE JUDGMENT

### COURT FINDINGS

The Supreme Court examined whether Sulpetro (Canada) had a taxable right to work the Buchan Field and whether the Payments received by RBC could be classified as income from immovable property under Article 6(2) of the UK/Canada Convention.

The Court ruled in favour of RBC, affirming the Court of Appeal’s decision that the Payments were not taxable in the UK. The key findings were:

#### No Right to Work Held by Sulpetro (Canada)

- The UK Government-issued licence was held by Sulpetro (UK), not Sulpetro (Canada).
- While Sulpetro (Canada) provided financing and expertise, it did not own the licence and had no direct right to extract oil.

#### Payments Were Not “Consideration for the Right to Work”

- The Payments were contingent royalties, dependent on oil prices, and did not stem from a direct operational right over the oil field.
- BP acquired the economic benefits of Sulpetro’s investments but did not obtain a licence transfer or exclusive extraction rights.

#### UK Had No Right to Tax Under Article 6(2)

- Since the Payments did not arise from a taxable right to work, they fell outside the scope of Article 6(2).
- The Payments were correctly taxed in Canada, as RBC was a Canadian tax resident with no UK permanent establishment.

Thus, the Supreme Court upheld the Court of Appeal’s decision, rejecting HMRC’s appeal and confirming that the Payments were not subject to UK taxation.

# KEY POINTS

## OF THE JUDGMENT

### OUTCOME

The Supreme Court's ruling had major implications for international tax law and cross-border financial transactions. The key aspects of the judgment's outcome were:

#### HMRC's Appeal Dismissed:

- The Supreme Court confirmed that the UK had no taxing rights over the Payments received by RBC.
- The Payments did not fall within Article 6(2) of the UK/Canada Convention, as RBC had no right to work the Buchan Field.

#### Payments Remain Taxable in Canada:

- RBC had correctly reported the Payments as income in Canada, ensuring they were not tax-free but simply allocated to the appropriate jurisdiction.

#### Impact on Future HMRC Tax Claims:

- The ruling clarifies the limits of Article 6(2),

restricting HMRC's ability to tax financial transactions indirectly related to UK-based assets.

- This decision sets a precedent that mere economic interest in natural resources does not automatically create a taxable UK right.

#### Legal and Business Implications:

- The decision reinforces the importance of clear legal structuring in multinational transactions.
- Multinationals and financial institutions should carefully document financial arrangements to avoid tax misinterpretations.
- It underscores the necessity of expert tax planning to mitigate cross-border tax risks.

Overall, the ruling was a significant victory for RBC and multinational corporations, limiting HMRC's ability to extend UK taxation to foreign financial transactions.

# TP METHOD

## HIGHLIGHTED (IF ANY)

Although this case is not a traditional transfer pricing (TP) dispute, it raises transfer pricing principles in the context of multinational transactions. The dispute concerned the allocation of taxing rights between the UK and Canada, similar to TP cases where income is apportioned across jurisdictions.

#### Economic vs. Legal Ownership of Assets

A key TP principle is distinguishing between legal and economic ownership.

- HMRC argued that Sulpetro (Canada) had an economic ownership interest in the oil field, justifying UK taxation.
- RBC countered that only Sulpetro (UK),

which held the official licence, had a "right to work" the Buchan Field.

This distinction aligns with OECD Transfer Pricing Guidelines, which state that:

- Taxation should be based on actual functions performed and risks assumed.
- Merely holding an economic interest does not confer operational control or taxable rights.

Thus, while not strictly a TP case, the ruling confirms that taxation should be based on legal rights and operational control, not merely economic exposure.

# PART 2

## SIGNIFICANCE

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# MAJOR ISSUES

## AREAS OF CONTENTION

The main areas of contention in this case were:

### 1. Definition of “Right to Work” Under Article 6(2)

- HMRC argued that the Payments were consideration for a right to work the Buchan Field.
- RBC countered that only Sulpetro (UK) held a UK government licence, making Sulpetro (Canada) a financial investor rather than an operator.

The Court ultimately agreed with RBC, ruling that ownership of a financial interest does not create a “right to work” for tax purposes.

### 2. Economic Substance vs. Legal Structure

- HMRC’s case relied on economic reality, arguing that Sulpetro (Canada) effectively controlled the commercial rights over the oil.
- RBC successfully argued that tax should be based on legal ownership, not on perceived economic control.

This debate reflects a wider tax policy discussion on whether taxation should be form-based or substance-based.

### 3. International Tax Treaties & Cross-Border Jurisdiction

- HMRC sought to expand the UK’s taxing rights by applying a broad interpretation of Article 6(2).
- The Court’s ruling limited HMRC’s ability to tax foreign companies without a clear operational presence in the UK.

This ruling reinforces the importance of clear tax treaty interpretations to prevent double taxation conflicts.



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# EXPECTED OR CONTROVERSIAL?

This decision was expected by many international tax professionals but was controversial for HMRC.

## Why It Was Expected

- The Court of Appeal had already ruled in favour of RBC, making a Supreme Court reversal unlikely.
- Similar cases suggest that mere economic interest does not equate to a taxable operational right.
- OECD treaty interpretation principles favour restrictive definitions of “right to work”.

## Why It Was Controversial

- HMRC took an aggressive stance, trying to

expand the scope of Article 6(2) to cover financial arrangements.

- Had HMRC won, it could have set a precedent allowing UK tax authorities to tax similar financial transactions involving offshore entities.
- The ruling frustrated HMRC’s broader tax policy objectives, particularly around preventing tax base erosion through international transactions.

While the ruling aligned with international tax norms, HMRC’s arguments reflected growing concerns about multinational tax avoidance. The case highlights the ongoing tension between tax authorities and global corporations over cross-border revenue allocation.

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# SIGNIFICANCE FOR MULTINATIONALS

This ruling has important implications for multinational enterprises, especially those engaged in natural resource extraction and financial structuring.

## 1. Clarification of Taxing Rights Under Treaties

- The ruling reinforces that only direct operational rights, not economic interests, trigger taxation under Article 6(2).
- MNEs should carefully structure transactions to ensure compliance with tax treaties.

## 2. Protection Against Aggressive Tax Authority Claims

- Had HMRC won, it could have increased

scrutiny of intercompany financial arrangements linked to resource extraction projects.

- The decision safeguards MNEs from overreaching tax claims on financial transactions.

## 3. Need for Robust Documentation & Legal Structuring

- This case underscores the importance of clearly documenting the nature of transactions.
- MNEs should avoid ambiguity in financial agreements to minimise tax disputes.

Overall, the ruling strengthens the position of multinationals in cross-border taxation matters.



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# SIGNIFICANCE

## FOR REVENUE SERVICES

For HMRC and other tax authorities, this ruling is a setback in efforts to expand taxing rights over cross-border transactions.

### 1. Limits on Taxation Under Double Tax Treaties

- The Supreme Court's decision restricts HMRC's ability to tax payments derived from UK assets unless there is a clear right to work.
- This means revenue authorities cannot claim taxing rights merely based on economic control or investment exposure.

### 2. Need for Legislative or Treaty Changes

- The ruling may prompt UK policymakers to seek changes in tax treaties to expand

the scope of taxing rights.

- HMRC may pursue future cases differently, focusing on substance-over-form arguments in domestic tax laws.

### 3. Impact on Future Tax Audits & Investigations

- HMRC may shift audit strategies, focusing on other tax provisions (e.g., transfer pricing rules) instead of relying on treaty-based claims.
- The ruling may influence how other jurisdictions (e.g., Canada) approach cross-border taxation cases.

Despite this loss, HMRC is likely to refine its approach to prevent future tax avoidance cases slipping through treaty limitations.

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# RELEVANT CASES

## CHEVRON VS AUSTRALIA

Both cases deal with tax authorities challenging financial arrangements between related entities in cross-border transactions. Like HMRC in the RBC case, the ATO sought to expand taxing rights over foreign financial transactions.

The key difference is that Chevron involved transfer pricing, while RBC's case revolved around the interpretation of a tax treaty.

[Click here to read our summary of this case](#)

## DAIMLER VS SOUTH AFRICA

Both cases involve tax authorities trying to look through the corporate structure to attribute tax liability based on economic control.

The Courts ruled that legal ownership matters more than economic influence, reinforcing the importance of tax treaties and legal certainty.

# PART 3

# PREVENTION

## ENGAGING EXPERTS

Engaging experts is critical for MNEs when structuring cross-border transactions and managing tax risks. The Royal Bank of Canada v HMRC case illustrates how tax authorities can attempt to recharacterise financial arrangements to expand their taxing rights.

### 1. Ensuring Proper Allocation of Income

- Experts help document intercompany transactions to prevent disputes over where income should be taxed.
- In RBC's case, HMRC tried to attribute UK taxing rights over a transaction legally structured in Canada.
- Had Sulpetro incorrectly priced its transactions, HMRC could have pursued additional tax adjustments under transfer pricing laws.

### 2. Avoiding Double Taxation

- Without proper TP documentation, MNEs risk paying tax twice on the same income.
- RBC had already paid tax in Canada, and HMRC's attempt to impose UK tax could have created double taxation.
- Experts ensure that tax treaties are applied correctly to prevent jurisdictional overlaps.

### 3. Strengthening Compliance and Defensibility

- HMRC lost this case because RBC had clear legal documentation showing the Payments were not taxable in the UK.
- Experts help MNEs draft robust intercompany agreements that withstand tax authority scrutiny.

MNEs operating across borders must consult specialists to ensure tax-efficient and legally sound structures, preventing costly disputes like RBC's case.

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# PREVENTATIVE

## MEASURES TO AVOID SIMILAR CASES

MNEs can avoid disputes like RBC v HMRC by implementing proactive tax risk management strategies, including tax steering committees and structured compliance frameworks.

### Tax Risk Management Framework:

- Establish policies to ensure compliance with domestic and international tax laws.
- Conduct regular audits to identify and address potential vulnerabilities, such as treaty reliance without adequate substance.

### Tax Steering Committee:

- Comprising tax professionals, legal advisors, and business leaders, the committee oversees tax strategy and risk management.
- Ensures alignment of business objectives

with tax planning, preventing artificial arrangements that may invite scrutiny.

### Regular Audits and Training:

- Conducting periodic internal audits of transfer pricing arrangements ensures that pricing practices remain defensible and compliant.
- Educate key stakeholders on evolving global tax laws, including the Multilateral Instrument (MLI) and anti-abuse provisions.
- Regular updates on compliance best practices minimise unintentional breaches.

These preventative measures, alongside strategic input from tax professionals, can significantly reduce the risk of litigation.

## DOWNLOAD FREE BOOK

### [TAX INTELLIGENCE: THE 7 HABITUAL TAX MISTAKES MADE BY COMPANIES](#)

Tax Intelligence: The 7 Habitual Tax Mistakes Made by Companies” by Dr. Daniel N. Erasmus is a must-read for businesses seeking to navigate the intricate world of tax compliance and risk management. By highlighting common pitfalls and offering strategic solutions, Erasmus equips companies with the knowledge to improve their tax practices and secure financial stability.

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# PREVENTATIVE

## MEASURES TO AVOID SIMILAR CASES

## TAX STEERING COMMITTEE

Establishing a tax steering committee can help ensure that tax policies are aligned with the broader business strategy and that transactions are vetted for both commercial and tax implications. A tax steering committee can:

- Review all significant cross-border transactions before they are executed.
- Ensure that tax decisions are made in the context of overall business objectives, not solely for tax savings.
- Monitor changes in international tax laws to ensure ongoing compliance and avoid disputes like this case.

## DOWNLOAD FREE E-BOOK

### [DRIVING TAX COMPLIANCE: THE ESSENTIAL ROLE OF THE TAX STEERING COMMITTEE](#)

The eBook “Driving Tax Compliance: The Essential Role of a Tax Steering Committee” by Prof. Dr. Daniel N. Erasmus, Renier van Rensburg, and Gilbert Ferreira, emphasizes the critical importance of establishing a Tax Steering Committee (TSC) within multinational corporations to ensure tax compliance and manage tax-related risks effectively.

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