[2019] UKFTT 0096 (TC)

TC06979

Appeal number: TC/2017/01410

TYPE OF TAX – Income tax – diver – UK sector – decommissioning - whether in connection with exploitation – ITEPA 2003, s.41

FIRST-TIER TRIBUNAL
TAX CHAMBER

CIARAN DUNNE **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE GERAINT JONES QC.
MR. CHARLES BAKER

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 14 January 2014

Ms Barbara Belgrano for the Appellant

Ms Laura Poots, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Tribunal Member Mr. Charles Baker.

1. This is an appeal by a non-resident diver who worked in the UK sector of the continental shelf. Mr Ciaran Dunne, a citizen of the Republic of Ireland, appeals against an amendment by way of a closure notice to his self-assessment tax return for the 2014/15 tax year.

Evidence

2. The parties had agreed the facts of the case and the sole issues for us to decide. They presented us with a bundle of documents and a bundle of authorities. Both Counsel presented their respective cases with admirable clarity. Altogether, the hearing was a model of how parties should present their respective cases and we thank them for that.

3. Mr Dunne gave evidence and was briefly cross examined to provide some minor clarification of the facts set out in his main witness statement.

Procedural background

4. HMRC opened an enquiry into the appellant's 2014/15 tax return on 23 June 2016. By its closure notice dated 19 October 2016, HMRC amended the appellant's return for the tax year 2014/15 to bring into charge £98,329.95 of the appellant's earnings from work he had carried out as a diver for Technip ("the Closure Notice").

5. Following a review, which upheld the Closure Notice, the appellant appealed to this Tribunal against the amendment made by the Closure Notice. Subsequently, HMRC agreed that the proportion of those earnings paid to the appellant in respect of time spent by him on standby in Ireland are not chargeable to tax and that, therefore, this appeal should be allowed at least to that extent. The amount remaining in dispute is £91,463.91.

The issue and legislation

6. Generally, a non-resident is liable to UK income tax only on UK sourced income. Ordinarily, work done outside the territory of the UK is not UK sourced income. Section 830 Income and Corporation Taxes Act 1988, in its original form, extended this country's claim to taxing rights. Separate legislation for income tax and corporation tax has now replaced section 830. As originally written, the section said:

> **830 Territorial sea and designated areas**
>
> (1) The territorial sea of the United Kingdom shall for all purposes of income tax and corporation tax (including the following provisions of this section) be deemed to be part of the United Kingdom.
>
> (2) In this section—

(a) "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;

(b) "exploration or exploitation rights" means rights to assets to be produced by exploration or exploitation activities or to interests in or to the benefit of such assets; and

(c) "designated area" means an area designated by Order in Council under section 1(7) of the [1964 c. 29.] Continental Shelf Act 1964.

(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.

(4) Any profits or gains arising to any person not resident in the United Kingdom from exploration or exploitation activities or rights shall for the purposes of corporation tax be treated as profits or gains of a trade carried on by that person in the United Kingdom through a branch or agency.

(5) 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.

7. Section 41 Income Tax (Earnings and Pensions) Act 2003, applies that principle to employment income:

41. Employment in UK sector of continental shelf

(1) General earnings in respect of duties performed in the UK sector of the continental shelf in connection with exploration or exploitation activities are to be treated for the purposes of this Chapter as general earnings in respect of duties performed in the United Kingdom.

(2) In this section—

"the UK sector of the continental shelf" means the areas designated under section 1(7) of the Continental Shelf Act 1964, and

"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 the UK sector of the continental shelf.

8. Also relevant is section 15 of the Income Tax (Trading and Other Income) Act 2005, which reads:

15. Divers and diving supervisors

(1) This section applies if—

(a) a person performs the duties of employment as a diver or diving supervisor in the United Kingdom or in any area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29),

(b) the duties consist wholly or mainly of seabed diving activities, and

(c) any employment income from the employment would otherwise be chargeable to tax under Part 2 of ITEPA 2003.

(2) The performance of the duties of employment is instead treated for income tax purposes as the carrying on of a trade in the United Kingdom.

(3) For the purposes of this section the following are seabed diving activities—

(a) taking part as a diver in diving operations concerned with the exploration or exploitation of the seabed, its subsoil and their natural resources, and

(b) acting as a diving supervisor in relation to any such diving operations.

The issues

9. The parties agreed to proceed on the basis that Mr Dunne was an employee of Technip Singapore Pte Ltd ("Technip") during 2014/15. The issues are:

(1) Were Mr Dunne's duties for Technip performed "in connection with exploration or exploitation activities", so as to fall within section 41 Income Tax (Earnings and Pensions) Act 2003?

(2) If the answer to Issue 1 is yes, did the duties performed by Mr Dunne consist "wholly or mainly of seabed diving activities", so as to fall within section 15 Income Tax (Trading and Other Income) Act 2005?

UN Convention on the Continental Shelf

10. The UK is a party to the United Nations Convention on the Continental Shelf, dated 29 April 1958. This gives to coastal states exclusive sovereign rights for the purpose of exploring and exploiting the natural resources of the adjacent continental shelf. The relevant natural resources are defined in Article 2(4) as:

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

11. The Articles 4 and 5(1) limits the rights in important ways:

"Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf."

and

"1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with

navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication."

12. Then Article 5 deals with installations for exploitation:

> *Article 5*
>
> 1. … [as before]
>
> 2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.
>
> 3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.
>
> 4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.
>
> 5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.
>
> 6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.
>
> 7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.
>
> 8. The consent of the coastal State shall be obtained in respect of any research concerning the continental …

References and abbreviations

13. In this Decision the following abbreviations are used:

BP	BP, companies in the BP group or the consortium led by BP operating in the Schiehallion field, as the context requires
Exploit Exploitation	Exploration and/or exploitation as the context requires.
Oil Fields	The Schiehallion and Loyal oil fields.
Section 41	Income Tax (Earnings and Pensions) Act 2003, section 41.
Section 15	Income Tax (Trading and Other Income) Act 2005, section 15.

Section 830	Income and Corporation Taxes Act 1988, section 830.
Barclays case	Barclays Bank Plc, Trustees of the Barclays Bank Pension Fund v Commissioners for Her Majesty's Revenue and Customs [2007] EWCA Civ 442.

The facts

14. The Schiehallion and Loyal oil fields ("the Oil Fields") are in the sea to the north of Scotland. They are approximately equally distant from the Shetland, Orkney and Faroe islands. The relevant parts of the Oil Fields are outside the territorial waters of the UK but in the area of the continental shelf where the UK can exercise exploitation rights in accordance with the UN Convention. Production started in 1998. In July 2011, BP and consortium partners announced their intention to re-develop the Oil Fields to extend production out to beyond 2035.

15. The Oil Fields used a vessel, the FPSO Schiehallion ("the Vessel"). FPSO stands for floating production storage and offloading. The Vessel was of substantial size, having an overall length of 246 metres and a beam of 45 metres. The Vessel combined oil and gas processing facilities and oil storage capabilities. Incorporated within the main body of the Vessel was a rotating turret. More accurately, the turret was anchored to the seabed and the Vessel rotated about the turret under the influence of wind and waves. The flexible risers carrying the oil and gas, the anchor lines and control umbilicals all reached the surface inside the turret.

16. In January 2013, BP published a draft decommissioning programme for public consultation. The bundle included the April 2013 version entitled "Schiehallion and Loyal Decommissioning Programmes Phase 1" ("the Decommissioning Programme"). This set out their plans for decommissioning in preparation for re-development of the field and the replacement of the Vessel with a new FPSO. Although not named in the document, this was to be the FPSO Glen Lyon. The estimated total cost of decommissioning was £256 million of which £80 million related to the Vessel. The BP document explained:

> The Schiehallion and Loyal fields development comprises five drill centres with 54 wells, an extensive subsea infrastructure, the FPSO and a gas export pipeline to Sullom Voe Oil Terminal in the Shetland Islands. Oil is exported from the FPSO via shuttle tanker. Significant potential remains in the Schiehallion and Loyal reservoirs, but the FPSO would need to remain on station until 2045 to produce the reserves. Operating efficiency of the existing FPSO has deteriorated over the years and it would be unable to fulfil future requirements. The fields are being redeveloped as "Project Quad 204", with a new-build FPSO vessel, additional wells and expansion of the subsea infrastructure. Facilities will be re-used wherever possible, but some will need to be disconnected, isolated and remain in-situ suspended for potential future operational consideration. All facilities being reused as part of the Quad 204 redevelopment project are outwith the workscope of the three programmes.

17. Before the start of the 2014/15 tax year, the Vessel ceased extraction, production and storage. BP flushed the storage tanks and filled them with water and nitrogen to make them safe. The plan was to disconnect the Vessel from risers, umbilicals and anchor chains and tow the Vessel away, for sale. BP engaged Technip to help with decommissioning the Vessel and the appellant was one of those employed by Technip on the project.

18. The turret on the Vessel extended approximately twelve metres below the waterline and was permanently flooded. The appellant made a total of eleven dives within the turret, of which three were in the tax year concerned. All the dives were concerned with preparations for the disconnection of the anchor chains. The appellant had no involvement with the risers or umbilicals.

19. Sometime after the appellant finished working on the Vessel, Technip asked him to go at short notice to Norway for a brief period of work on the FPSO Glen Lyon. He performed the work in a harbour in Norway. He had no involvement with the Glen Lyon when it was taken to the Oil Field. According to a BP Press Release, FPSO Glen Lyon began its sea trials in December 2015, so that was after the 2014/15 tax year.

The argument for the appellant

20. For income tax purposes, the UK includes the territorial sea (Income Tax Act 2007, section 1013). Broadly, that is the sea within 12 nautical miles of land (Territorial Sea Act 1987, section 1). The Oil Fields are outside the UK. Accordingly, a non-resident taxpayer is only liable to UK tax because of a connection with the UK other than geography.

21. The UK is a party to the United Nations Convention on the Continental Shelf dated 29 April 1958. This gives to the coastal state sovereign exclusive rights for the purpose of exploring and exploiting the natural resources of the adjacent continental shelf. Article 5 permits the construction of installations for the exploration and exploitation of the natural resources but "any installations which are abandoned or disused must be entirely removed". The exploration and exploitation rights vest in the Crown which in turn grants licenses to use those rights. It is the license rights and not geography that provides the connection that allows the UK to tax income arising.

22. It is the appellant's case that there is a distinction between exploitation on the one hand and decommissioning on the other. This distinction is in both the general law and the tax code.

23. The UN Convention gives the right to exploit in Article 2. Article 5 imposes duties and conditions to prevent undue interference with the rights of others. These conditions include prohibition of unjustified interference with navigation, fishing, conservation or research. Notice must be given of the location of installations which must maintain warnings of their presence. If necessary, there may be safety zones around installations. Then Article 5(5) includes "Any installations which are abandoned or disused must be entirely removed".

24. Part IV of the Petroleum Act 1998 is concerned with the abandonment of offshore installations. Section 29 allows the Secretary of State to require a person to submit "a programme setting out the measures proposed to be taken in connection with the abandonment of an offshore installation or …". That is a separate activity from exploitation.

25. This distinction between exploitation and decommissioning carries over into the tax legislation. In both sections 41 and 830, the UK claims an extension of its taxing rights outside its geographical location, but only in respect of exploitation of the seabed and subsoil. Parliament was using the rights granted by the UN Convention and did not intend to make any wider claim.

26. So far as the appellant is concerned, he had no deemed UK source of income when his duties were not making use of the exploitation rights. Exploitation by the Vessel had ceased. It was no longer using any exploitation rights. Instead it was undergoing a programme of decommissioning approved by the Secretary of State under Part IV of the Petroleum Act 1998.

27. There are other distinctions between exploitation and decommissioning in the Taxes Acts. The Capital Allowances Act 2001, by section 163, gives relief for "general decommissioning expenditure" which is expenditure on decommissioning plant or machinery of a ring fenced trade. Broadly, that oil extraction is treated as a separate trade. Another example is in Income Tax (Earnings and Pensions) Act 2003, section 225V. The section is headed "Receipts arising from decommissioning". It deals with the case where a person had defaulted on a liability under an abandonment programme under the Petroleum Act 1998 and another person has made good the whole or part of the default.

Source of the income

28. The *Barclays* case was about retirement benefits, but it had a useful discussion of the meaning of "in connection with". Arden LJ said:

> [19] Accordingly, the other parts of the definition of "relevant benefits" and the surrounding provisions of the legislative scheme, will inform the court as to the extent of the link required by any particular provision. Thus the court must examine the function or purpose of the definition of "relevant benefits"…
>
> [20] …I conclude that a connection may be indirect for the purpose of the definition of relevant benefits. Accordingly, it is possible that the making of a payment will have a relevant connection with more than one thing. In that situation, it is in my judgment necessary to see whether the connections can co-exist, or whether one will actually exclude the other. If, on proper analysis the further connection displaces a prior connection, the prior connection ceases to be a relevant connection for the purpose of s.612(1)."

29. So far as the BP production consortium was concerned, the Vessel was not the source of their income. Rather, the source their income was their license to exploit. That was distinguishable from their obligation to decommission. The work done by the

appellant was in connection with the decommissioning. That displaced any other connection and so it is not necessary to consider whether there was any connection with exploitation.

Income tax is an annual tax

30. Income tax is an annual tax and it is well established that it only applies to the extent that a taxpayer has a source of income in the tax year. In circumstances where (as in the present case) no exploration or exploitation is in fact being carried out because it has ceased, there is nothing in section 41 ITEPA 2003 that deems the "*exploration or exploitation activities*" to continue. In the absence of any such deeming, it is unintelligible to describe the appellant's duties as being carried out "*in connection with*" exploration or exploitation activities. It is precisely because the exploration or exploitation had ceased that the appellant was asked to carry out his duties in order to assist the disconnection of the Vessel.

31. The words "*in connection with*" do not deem the activity of "*exploration or exploitation*" to be carried on. What those words do is extend the scope of section 41 ITEPA 2003 to activities that, although not exploration or exploitation activities themselves, are carried out in connection with exploration or exploitation activities at a time when exploration or exploitation activities are actually being carried out. Decommissioning is commercially a different activity to exploring and exploiting. There cannot, therefore, be a relevant "*connection*" unless exploration or exploitation activities are carried out. As there was no exploitation during the tax year, the appellant did not have a relevant source of income.

32. In summary, the appellant's case is that, although his duties were performed in the UK sector of the continental shelf, those duties were not performed in connection with the exploration or exploitation of the seabed and subsoil and their natural resources, for the purposes of section 41 ITEPA 2003 because:

(1) the appellant was involved in the process of disconnecting a floating production storage and offloading vessel once the vessel had ceased any exploration or exploitation of the seabed; and

(2) in any event, the appellant had no professional knowledge or skill that related to the exploration or exploitation of the seabed and subsoil and their natural resources and was therefore not participating (through receipt of his earnings) in any profits arising from the exploration or exploitation of the seabed its subsoil and/or natural resources.

The argument of HMRC

33. Although production ceased in 2013, BP was continuing to exploit the fields. As the Decommissioning Programme and the BP press releases made clear, this was only a temporary pause. The decommissioning of the Vessel and other installations was preparatory to the installation of new equipment, including a replacement FPSO, and the resumption of production.

34. The appellant's duties were part of the process of decommissioning the Vessel, undertaken at a time when the particular Vessel had ceased operations. The activity of decommissioning the Vessel was undertaken both in connection with the previous fifteen years of exploitation of the Oil Fields and in connection with the ongoing exploitation via the replacement vessel, the Glen Lyon.

35. The decommissioning and removal of the Vessel (and ultimately of its successor) is an inevitable part of the exploitation of the Oil Fields and, as such, there is a very strong connection between the exploitation and the activity of decommissioning the Vessel. On that basis, the Respondents submitted that it is clear that the appellant's duties were performed in connection with exploitation activities.

36. The strong connection between exploitation and decommissioning comes from the terms of the UN Convention, implemented by Part IV of the Petroleum Act 1998. The rights and obligations of a person granted a license to exploit the subsea go hand-in-hand. In this case, we do not have two conflicting connections so that we need to choose the dominant. Instead we have a single connection to the activities of BP in that oil field.

37. The Respondents submitted that it is not necessary to look any further; it is sufficient that the appellant's duties were part of the decommissioning of the Vessel. If, however, the Tribunal did consider it necessary to look at the wider activities in the Oil Fields, it should be noted that the decommissioning of the Vessel was not the end of the exploitation of the Oil Fields by BP. The Vessel was being decommissioned and replaced with the Glen Lyon. Numerous pieces of equipment will be commissioned and decommissioned throughout the process of exploiting natural resources, and the Vessel was one such piece of equipment (a particularly significant one, of course). The decommissioning was therefore part of an ongoing activity of exploitation and the appellant's duties were performed in connection with that ongoing activity.

Discussion

38. In the most general sense, equipment commissioned for some productive process will eventually be decommissioned. To that extent, there is a connection between decommissioning and the productive process that went before. However, it is too simplistic to say that decommissioning is simply a natural and inevitable stage in a productive process. The appellant says that there were no exploration or exploitation activities because exploitation had ceased. Decommissioning is a separate activity from exploitation. It seems to me that that assertion raises several questions. We will deal with them by first examining the connections between exploitation and decommissioning. Then it is necessary to consider questions of timing and the consequences of there being no production when the appellant performed his duties.

Connections between exploitation and decommissioning

39. Decommissioning has different purposes from exploitation. The purposes of decommissioning include:

(1) Compliance with the decommissioning obligations under Part IV of the Petroleum Act 1998.

(2) The recovery of value from the obsolete equipment by sale or re-use. BP's ambition in this case was to re-use or re-cycle more than 95% of the recovered inventory.

(3) (in some cases) to prepare the site for the installation of replacement equipment.

40. I accept that the appellant worked on the Vessel only during the decommissioning operations. I accept that decommissioning has different purposes from exploitation and may require a different mix of skills. In this case it may require different personnel on the Vessel though some of the management or support staff may be the same. There was no evidence about the overall mix of personnel, but it seems to be of no importance. Whatever particular individuals were on the Vessel, BP remained the controlling party.

41. HMRC say that the decommissioning and removal of the Vessel (and ultimately of its successor) is an inevitable part of the exploitation of the Oil Fields and, as such, there is a very strong connection between the exploitation and the activity of decommissioning the Vessel. That seems to be right in the sense that decommissioning follows from exploitation and because the exploitation rights carry with them the "clean up" obligations that go hand in hand with the exploitation rights. BP could not have one without the other.

42. Ms Belgrano, for the appellant, says that the taxing rights flow from the exploitation rights rather than from the physical apparatus. Section 30 Petroleum Act 1998 describes the persons whom the Secretary of State can require to prepare an abandonment programme for an offshore installation. Those persons include a person described in sub-section (5):

> (5) This subsection applies to a person in relation to an offshore installation if—
>
> (a) the person has the right—
>
> (i) to exploit or explore mineral resources in any area,
>
> (ii) to unload, store or recover gas in any area or to convert any natural feature in any area for the purpose of storing gas, or
>
> (iii) to explore any area with a view to, or in connection with, the exercise of a right within sub-paragraph (i) or (ii), and
>
> (b) either—
>
> (i) any activity mentioned in subsection (6) is carried on from, by means of or on the installation, or
>
> (ii) the person intends to carry on an activity mentioned in that subsection from, by means of or on the installation,
>
> or if he had such a right when any such activity was last so carried on.
>
> (6) The activities referred to in subsection (5) are—
>
> (a) the exploitation or exploration of mineral resources in the exercise of the right mentioned in subsection (5)(a);

(aa) the unloading, storage or recovery of gas in the exercise of that right;

(ab) …

43. Section 30 directly ties the obligation to submit and carry out an abandonment programme with the exploitation rights. In that way, they are directly connected.

44. Ms Belgrano suggested that an obligation to decommission is different from a right to exploit. That may be so, but the question is whether they are connected and Section 30 provides a direct connection.

Application to the legislation

45. Section 41 reads:

41. Employment in UK sector of continental shelf

(1) General earnings in respect of duties performed in the UK sector of the continental shelf in connection with exploration or exploitation activities are to be treated for the purposes of this Chapter as general earnings in respect of duties performed in the United Kingdom.

(2) In this section—

"the UK sector of the continental shelf" means the areas designated under section 1(7) of the Continental Shelf Act 1964, and

"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 the UK sector of the continental shelf.

46. Section 41 has a "double connection" test. Starting at the end of the section and working forwards, the BP newsletters make it clear that the overall purpose of BP in the Oil Fields was "exploitation of so much of the seabed and subsoil and their natural resources as is situated in … the UK sector of the continental shelf." Specifically, their purpose was the extraction of oil and natural gas.

47. Then "exploration or exploitation activities" means activities carried on (by anyone) in connection with that purpose. That is one connection. The other connection is that the particular employee must perform his duties in connection with (someone else's) exploration or exploitation activities. The *Barclays* case tells us that a connection may be direct or indirect. If a particular matter has more than one connection, those connections may co-exist or one may displace another.

48. The legislation does not limit or qualify the phrase "connected with" and so it must have a wide meaning. Without regard to issues of timing, decommissioning and exploitation are connected for the reasons already given. They are connected because one will eventually follow from the other. They are connected because the rights to exploit are directly linked with an obligation to decommission in accordance with an abandonment programme. It follows that "exploration or exploitation activities" for the purposes of Section 41, includes decommissioning.

49. Having decided that "exploration or exploitation activities" includes decommissioning, it follows that the appellant's duties were in connection with

"exploration or exploitation activities". Ms Belgrano argued that the appellant's duties were exclusively concerned with decommissioning and that that connection displaced any other connection. We disagree because the appellant's connection with decommissioning can co-exist with his connection with "exploration or exploitation activities" as defined for the purposes of Section 41.

Issues of timing

50. Ms Belgrano argued that the words "*in connection with*" do not deem the activity of "*exploration or exploitation*" to be carried on. What those words do is extend the scope of Section 41 to activities that, although not exploration or exploitation activities themselves, are carried out in connection with exploration or exploitation activities at a time when exploration or exploitation activities are actually being carried out. Decommissioning is commercially a different activity to exploring and exploiting. There cannot, therefore, be a relevant "*connection*" unless exploration or exploitation activities are carried out. As there was no exploitation during the tax year, the appellant did not have a relevant source of income.

51. We disagree. Two matters can be connected when one follows on from the other as well as when they exist at the same time. The legislation does not time limit or qualify the phrase "connected with".

52. On a natural purposive reading it seems that "connected with" refers to any activities related to the exploitation rights granted by the UN Convention to the UK and then by the UK to BP. That is in contradiction to other activities such as fishing or the laying of submarine cables that are explicitly outside the rights granted by the UN Convention.

53. Ms Belgrano referred to the principle that income tax is an annual tax and applies to sources of income that exist during the tax year. She argued that the appellant had no source because there was no exploitation during the year. However, the source of the appellant's income stemmed from the duties that he performed and those did arise in the relevant tax year.

54. These conclusions are reinforced by considering the personnel on a production vessel that are not directly involved with the production process. The catering staff would be an example, but there may be other support staff. If decommissioning is not "connected with" exploitation then the consequence would be that the taxation status of the non-resident staff depends upon whether that vessel was actually producing/exploiting relevant resources. It would be very surprising if the tax status of a particular member of the support staff performing the same duties on the same vessel in the same location, changed when the oil stopped flowing. If that was the intended effect, we would have expected the legislation to say so.

Lack of knowledge of oil exploration

55. We accept that the appellant has little or no knowledge of the technicalities of oil exploration or extraction. In my judgment that is irrelevant. The question is whether

his duties were connected and not whether he understood how those duties fitted into the overall design of the project.

Seabed diving activities

56. Section 15 provides that a person employed as a diver or diving supervisor on seabed diving activities is treated, notwithstanding that the person is an employee, as if self-employed. The parties have now agreed that if Section 41 applies, then so too does Section 15. That is plainly right. Seabed diving activities are operations concerned with exploitation of the natural resources of the seabed. There is no requirement that the diver visits the seabed; only that the operations are concerned with the exploitation of the seabed.

Resumption of exploitation

57. Upon this analysis it is irrelevant whether the cessation of oil and gas extraction in the Oil Fields was permanent or temporary. In case that is wrong I will deal briefly with the planned resumption of oil and gas extraction.

58. BP published the following statements, amongst others:

> Significant potential remains in the Schiehallion and Loyal reservoirs, but the FPSO would need to remain on station until 2045 to produce the reserves. Operating efficiency of the existing FPSO has deteriorated over the years and it would be unable to fulfil future requirements. The fields are being redeveloped as "Project Quad 204", with a new-build FPSO vessel, additional wells and expansion of the subsea infrastructure. Facilities will be re-used wherever possible, but some will need to be disconnected, isolated and remain in-situ suspended for potential future operational consideration.
>
> Decommissioning Programme, April 2013
>
> The contracts are for the provision of services and equipment for the major redevelopment of the Schiehallion and Loyal fields …
>
> BP Magazine Issue 4 2013
>
> The new FPSO is a key element of the multi-billion pound Quad204 project, which is re-developing the Schiehallion and Loyal fields, extending production out to 2035 and possibly beyond.
>
> Press release 10 December 2015

59. The introduction to the Decommissioning Programme explained:

> The Schiehallion and Loyal fields' development comprises five drill centres with 54 wells, an extensive subsea infrastructure, the FPSO and a gas export pipeline to Sullom Voe Oil Terminal in the Shetland Islands. Oil is exported from the FPSO via shuttle tanker.

60. From this description, it is clear that the Vessel played an important part in the project of extracting oil and gas. It collected oil from the undersea wells and pipelines, stored the oil and then transferred it to a shuttle tanker for onward movement. The Vessel also had gas processing facilities but the Decommissioning Programme did not

explain their exact function. From these descriptions it is clear that the Vessel was a piece of equipment that played an important part, but only a part, in the exploitation project.

61. Taking the wider view, BP began production from the Oil Fields in 1998 and plans to continue production until at least 2035. In 2013 there was a temporary halt to production for the replacement of a worn-out piece of equipment. Certainly the scale and technical complexity of the BP operations in the Oil Fields is beyond the experience of most people. Nevertheless, the work done by the appellant was simply to help replace one worn out piece of equipment with another. It was one task out of very many in a very large exploration and exploitation project.

Conclusion

62. Thus I would formally allow the appeal to the extent of the standby duties, which leave earnings of £91,463.91 in dispute. For all the reasons given above, I conclude that Mr Dunne's duties in the Oil Fields fell within Section 41 and consequently I would dismiss his appeal.

Judge Jones QC.

63. I agree and there is nothing that I can usefully add.

64. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

Decision.

The appeal is dismissed (save in respect of the agreed matter referred to at paragraph 5 above).

GERAINT JONES QC.
TRIBUNAL JUDGE

RELEASE DATE: 12 FEBRUARY 2019