



TC01822

Appeal number: TC/2009/11998

INCOME TAX – seafarers earnings deductions – vessel was not an offshore installation because it was not stationed – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN DAVIES

Appellant

- and -

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

**TRIBUNAL: JUDGE BARBARA J KING
 JOHN DAVISON**

Sitting in public at North Shields on 25 January 2012

The Appellant in person assisted by Mrs Davies

Alan Hall of HM Revenue and Customs, for the Respondents

DECISION

The issue

1. This appeal relates to entitlement to ‘seafarers earnings deduction’ (“SED”) for the tax years 2001-02 and 2002-03. The Appellant believes that the vessel on which he was working at various times in these tax years, the MSV (Multi Service Vessel) Regalia, should be classed as a ship in each period and that he is therefore entitled to SEDs. The Respondents (HMRC) assert that the Regalia was an Offshore Installation in three periods namely

(1) 17 April 2001 to 7 October 2001 whilst the Regalia was operating at West of Shetland (“WoS”) on a contract for BP

(2) 8 October 2001 to 18 April 2002 whilst the Regalia was operating in the Asgard, Norwegian Continental shelf, on a contract with Statoil.

(3) 19 April 2002 to 23 September 2002 whilst the Regalia was back at WoS on the contract with BP

2. The areas of disagreement between the parties as to whether the Regalia can be treated as a ship came down to whether during those periods

(1) it was ‘stationed’

(2) it was involved working

(a) on a well or (b) in a well

The legislation

3. The Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (“MAR”) contains the following regulations:-

2 - (3) for the purposes of these regulations any structures and devices on top of a well shall be treated as forming part of the well

3 - (1) Subject to the provisions of this regulation, in these regulations the expression “offshore installation” means a structure which is, or is to be, or has been used, while standing or stationed in relevant waters, or on the foreshore or other land intermittently covered with water –

(a) For the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well;

(b) For the storage of gas in or under the shore or bed of relevant waters or the recovery of gas so stored;

(c) For the conveyance of things by means of a pipe; or

(d) Mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of this paragraph,

and which is not an excepted structure

3 -(2) For the purposes of paragraph (1), the excepted structures are

(a) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes;

(b) a well;

5 (c) a structure or device which does not project above the sea at any state of the tide;

(d) a structure which has ceased to be used for any of the above purposes specified in paragraph (1), and has since been used for a purposes not so specified;

10 4. The Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001 (AOGBO) came into force on 11 July 2001 and extended the definition of an “Offshore Installation” to include

Together with any supplementary unit which is ordinarily connected to it, and all the connections.

15 5. AOGBO provided that the Act would apply to

(a) a well and any activity in connection with it; and

(b) an activity which is immediately preparatory to any activity in subparagraph (a) above

20 This includes keeping a vessel on station for the purpose of working on a well but otherwise does not include navigation or an activity connected with navigation.

6. Following on from AOGBO an amendment to MAR was brought into force on 17 September 2002. Regulation 3(1) contained all the wording of the previous 3(1) (a)-(d) but replaced the wording

25 ‘and which is not an excepted structure’ with

‘together with any supplementary unit which is ordinarily connected to it or any part of it (including those parts described in paragraph (3) below) and all of the connections’

and in regulation 3(2) replaced the wording

30 ‘for the purposes of paragraph (1) the excepted structures are’ with

‘any reference in paragraph (1) to a structure or unit does not include’

The evidence

35 7. A Statement of Facts was agreed between the parties as at 4 June 2010. Various Brochures for the Regalia were provided. It was built in 1985, as a self propelled, dynamically positioned semi-submersible vessel, originally designed as a subsea diving construction and installation unit.

8. In 2000 it was owned by Halliburton, who agreed a contract with BP for work to be carried out at the WoS oilfields. Halliburton/Rockwater described the vessel in their literature as:-

5 “Designed to function in severe weather conditions, Regalia is the most versatile semi-submersible of its kind currently operating. With its lift capability and custom-built diving system it provides cost effective support for heavy subsea construction and installation, and is particularly suitable for remote, deepwater work.”

9. Ownership of the Regalia went from Halliburton to Prosafe in late 2000 but it was agreed that the Regalia would carry out the work at WoS and this work started in 2001.

10. In late 2001 the Regalia interrupted its work at WoS to go and carry out emergency work for Statoil (the Norwegian National oil Company) at the Asgard field on the Norwegian continental shelf.

11. The parties have agreed a summary of work done at both WoS and at Asgard.

12. The agreed summary of work done at WoS was

20 “The MSV Regalia work for WoS included the use of four Remotely Operated Vehicles (ROV) and their associated support systems. The support systems included the Diverless Maintained Cluster (DMac) tooling equipment for connecting and disconnecting subsea umbilicals and control lines, along with subsea workbaskets and deployment cages for deploying new umbilicals, flow lines, risers and control cables.

25 The main activities were for the installations of new infrastructure at WoS, including the testing and commissioning of new production and injection wells, along with “IRM” (inspection, repair and maintenance) services. As part of this, new subsea hubs and manifold structures, new umbilicals, control cables and flow lines were installed. The hubs were then connected up to manifolds with new umbilicals, control cables and umbilical control jumpers, with others being reconfigured around the new structures.

30 To do this the Regalia moved around the subsea clusters of both Foinaven and Schiehallion oil fields installing and laying out the control umbilicals and jumpers across the seabed.

Upon being lowered to the seabed the jumper assembly is then laid out through a specific “lay-down path” between the appropriate structures, before being connected up at both ends.

35 To connect the jumpers, specialist tools such as the DMaC system had to be deployed to connect the umbilicals to the porches of the different structures on the seabed such as hubs and manifolds. In some areas new hubs/manifolds were deployed from the vessel and connected to the oilfield infrastructure.

As well as installing and connecting umbilicals, jumpers and hubs, the project also carried out IRM services on other components associated with subsea structures both in the Foinaven and Schiehallion oilfields. However the main contract was for the installation and commissioning of the main infrastructure of the fields to enable them to come on stream. The IRM work, where possible, was carried out in tandem with construction activities and utilised the smaller Examiner ROVs to survey and test components etc.

The Daily Project Reports (“DPRs”) give minute by minute narrative reports of all activities carried out during the whole of the WoS project and are available for review. Extracts of the reports such as vessel movements during the project and daily work completed are available.”

13. The Agreed summary of work at Asgard was

“This project was for the urgent repair of subsea equipment. Subsea flowlines and spool pieces were disconnected from the subsea structures using the ROVs, by a similar technique to the DMaC tools used on WoS. These connectors were then brought up to the surface, lifted aboard the Regalia, and were repaired on deck before being reinstalled by the ROVs.”

14. The parties agree that the Regalia performed work on the subsea structures, which included the change-out and repair of equipment, using the DMaC connection tools. These structures include the hubs, manifolds and trees.

15. The dates when the Appellant was working on the Regalia have been agreed.

16. The parties had agreed Summaries of Daily Transit and Vessel movements for the Regalia from 4 May 2001 to 30 September 2001 and from 5 May 2002 to 15 September 2002 whilst the Regalia was operating at WoS and from 17 October 2001 to 15 April 2002 whilst the Regalia was at Asgard. These had been taken from more detailed Daily Progress Reports (DPRs) which were available at the hearing.

17. HMRC had produced further summaries from the DPRs of the position and work done by the Regalia in each of the three periods. Mr Davies had produced summaries of the activities of the Regalia in tax years from 1991-92 to 2003-04 and a summary of voyages and ports visited between 1 January 2001 to 4 April 2003. These summaries were not agreed.

18. We were much assisted at the hearing by both Mr Davies and Mr Hall in the presentation of evidence and in the explanation of terminology.

Further findings of fact

19. We find that the Regalia was an extremely versatile vessel. It was fitted to a very high degree of specification. It could and did navigate between the different places where it carried out particular pieces of work. It could and did at times follow an ROV. It could drag umbilicals if necessary. In an emergency it could relocate, under its own power and propulsion to a completely different oilfield.

20. In West of Shetland the Regalia moved on a regular basis between the Foinaven oilfield which had 32 subsea wells and the Schiehallion, approximately five miles away, which had 42 wells. In the months of May, June, July and September 2001 the Regalia was in transit on over 20 occasions in each month. It also made additional small movements, almost daily, in order to move it into position.

21. The Asgard oilfield site had 57 wells and a similar layout to the WoS site, hence the reason why, when the emergency arose, the Regalia was called upon to carry out the work at Asgard.

22. The work at Asgard was due to take approximately two months but because of bad weather and the fact that the Regalia had to go in for repairs at Kristiansund for almost two weeks, it was away from WoS from the end of September 2001 until the beginning of April 2002.

Legal Authorities

23. We were referred to several authorities. The case of *Torr v HMRC 2008 Spc 00679* involved the Pride of Americas which was a self-propelled, dynamically positioned, semi submersible vessel, which had originally been designed as an offshore drilling unit. In that case it was held that the word *stationed* meant *substantially stationary* and that this could be the case whilst a structure was using its dynamic positioning facility. We accept that the Regalia had dynamic positioning and therefore had some similarities to the Pride of America but we have found that the overall work undertaken by the Regalia could not be described as ‘*substantially stationary*’ or ‘*stationed.*’ The Pride of America moved on 24 occasions in one tax year and 26 in the next, whereas the Regalia moved on that number of occasions per month and the variety of work undertaken by the Regalia was greater. This too necessitated the Regalia being on the move to a much higher degree.

24. The question of small movements was considered in the case of *Gouldson v HMRC TC00631*. The vessel in that case, the Edda Fyord, was being used mainly for the provision of accommodation. It circled around storage tanks but was never anchored or physically attached to them. At the first tier Tribunal the question of whether the fact that storage tanks were in the course of construction at the time took the work of the Edda Fyord outside the definition of Offshore Installation. It was held that it did not and this followed a similar finding in *Langley v HMRC 2007 Spc 0064*.

25. There was an appeal to the Upper Tribunal in *Gouldson v HMRC [2011] UKUT 238 (TCC)* and the question of whether it was stationed arose. Reference to *Torr* was made. The Upper Tribunal agreed that ‘stationed’ does not require a vessel to be fixed rigidly in one immovable position, but allows of ‘minor movements in relation to a fixed point.’ In effect the Edda Fyord was found to be ‘stationed’ next to the storage tanks whilst it was circling them. We find that the work of the Regalia was substantially different to that in *Torr* and overall the movements of the Regalia were not minor movements in relation to a fixed point.

26. The case of *Spowage and others v HMRC TC00110* involved three different vessels, Safe Britannia , Safe Lancia and Safe Caledonia . The vessels were found to be more or less constantly moving around the Canterell oilfield from location to location. The size of the oilfield in Canterell was considerably larger than in both
5 WoS and Asgard but nevertheless we find that the Regalia was on the move to such an extent, within the oilfields at WoS and Asgard, that the Regalia could be described as roving. The question is one of fact and degree.

27. We found that the facts concerning the vessel in the case of *Wright v HMRC TC00655* were so different from those concerning the Regalia that the case of *Wright*
10 did not assist in this decision.

The decision

28. We have considered the law and the evidence. In respect of the activities carried out by the Regalia we find that these did involve work on the top of the well and so the Regalia was involved in “the exploitation, or exploration with a view to
15 exploitation, of mineral resources by means of a well.” We have however found that the versatility of the Regalia and the fact that it was moving around to such a high degree meant that, overall, it was not stationed either whilst working at WoS or at Asgard. It was not therefore an Offshore Installation in the periods set out in paragraph 1 and we allow the appeal.

29. 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
20 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.

30 **Barbara J King**
TRIBUNAL JUDGE
RELEASE DATE: 14 February 2012

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