

Case summary

Issue(s)

Whether Article 7 (on business profits) of the UK-South Africa Double Taxation Treaty ("DTC") or Article 14 DTC (on income from employment) applies for the purpose of allocating taxing rights in respect of remuneration for services provided by a diver in the UK under a contract of employment.

Facts

Mr Fowler is a qualified diver and a resident of South Africa. In the tax years 2011/2012 and 2012/2013, he undertook diving engagements in the waters of the UK continental shelf. The DTC, to which the UK and South Africa are parties, came into force on 17 December 2002. The dispute concerns whether the UK or South Africa is entitled to levy tax on Mr Fowler's income derived from his diving activities during those two tax years. It is common ground between the parties that, if Mr Fowler was self-employed, the answer to the question is South Africa. However, it is in dispute whether he was in fact self-employed. The First-tier Tribunal ("FTT") directed the trial of a preliminary issue concerning the application of the DTC and the UK's domestic tax legislation. That issue was addressed on the factual assumption that Mr Fowler was an employee during those years. Judge Brannan in the FTT answered that question in Mr Fowler's favour, but Marcus Smith J, in the Upper Tribunal, reversed that decision. The Court of Appeal, by a majority, allowed the appeal by Mr Fowler. The Commissioners for Her Majesty's Revenue and Customs now appeal to the Supreme Court.