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INTERNATIONAL TAX
CASE SUMMARY

UK vs REFINITIV AND OTHERS (THOMSON REUTERS)

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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

JUDGEMENT SUMMARY

CASE OVERVIEW

Court:	Court of Appeal (Civil Division)
Case No:	CA-2023-002584
Applicant:	Refinitiv Limited and affiliates (including Thomson Reuters Corporation)
Defendant:	HMRC (His Majesty's Revenue and Customs)
Judgment Date:	15 November 2024
Full Judgment:	CLICK FOR FULL JUDGMENT
View Online:	CLICK TO VIEW SUMMARY ONLINE

JUDGMENT SUMMARY

The Court of Appeal's decision in Refinitiv v HMRC is a defining moment in the intersection of transfer pricing and Diverted Profits Tax (DPT). The case revolved around DPT notices issued to three UK-resident companies within the Thomson Reuters group for the 2018 tax period, totaling over £167 million. The dispute arose from conflicting interpretations of an expired Advance Pricing Agreement (APA) between the companies and HMRC.

At the heart of the case was the APA, concluded in 2013, which governed the pricing of intra-group services for the period 2008–2014. This agreement specified the Transactional Net Margin Method (TNMM) as the applicable transfer pricing methodology, determining remuneration for UK entities using a cost-plus markup. HMRC's later application of DPT involved recalculating profits for the 2018 period, employing a profit-split method instead. Refinitiv contended that the APA principles should govern these calculations, given their relevance to services provided during the APA's duration.

The Court of Appeal upheld the Upper Tribunal's earlier decision, concluding that the APA's temporal and statutory scope was confined to the periods it explicitly covered. It determined that the APA did not apply to the 2018 period, even though the services at issue had been rendered during its term. The Court emphasized that extending the APA's principles beyond its defined duration would undermine its purpose and the legislative framework governing APAs. This decision reaffirms the need for multinationals to anticipate and adapt to evolving tax regulations proactively.

The ruling is particularly significant for its insights into the interaction between APAs and newer tax regimes like DPT. It underscores the necessity for precise APA terms and highlights the risks of relying on expired agreements in disputes over later tax periods.

The court annulled the contested tax assessment, ruling in favour of A…, S.A. This case serves as a critical precedent in defining the temporal scope of special relationships in transfer pricing and reinforces the need for valid comparables in tax adjustments.

KEY POINTS

OF THE JUDGMENT

BACKGROUND

The dispute in Refinitiv v HMRC emerged against the backdrop of an Advance Pricing Agreement (APA) concluded between Thomson Reuters' UK entities and HMRC in 2013. The APA, valid for the period 2008–2014, governed the transfer pricing methodology for a range of intra-group services. Under this agreement, the Transactional Net Margin Method (TNMM) was employed to calculate compensation for UK entities based on a cost-plus markup of 6% to 15%.

The introduction of the Diverted Profits Tax (DPT) in 2015 added complexity to the case. Designed to counter profit shifting to low-tax jurisdictions, DPT imposed a higher tax rate of 25% on taxable diverted profits. The DPT framework introduced new criteria for evaluating the economic substance of transactions, departing from the principles underpinning traditional transfer pricing rules.

Following the expiration of the APA, HMRC reassessed the pricing of services rendered by Refinitiv entities, arguing that the cost-plus approach did not adequately reflect their contributions to value creation. This reassessment involved applying a profit-split method to allocate profits more equitably between the UK and other jurisdictions. DPT notices were subsequently issued for the 2018 tax year.

Refinitiv challenged these notices, asserting that the APA's principles should guide the assessment of profits derived from services provided during its term. The case progressed through the courts, culminating in the Court of Appeal's judgment in November 2024.

KEY POINTS
OF THE JUDGMENT

CORE DISPUTE

The primary question in this case was whether the APA, which expired in 2014, could influence the calculation of profits for the 2018 tax year. Refinitiv argued that the APA's pricing methodology should govern the evaluation of profits derived from services provided during its term, even if assessed in a later period. Specifically, the company contended that the DPT notices conflicted with the APA's agreed TNMM approach, which determined compensation for intra-group services based on a cost-plus methodology.

HMRC countered that the APA explicitly applied only to the chargeable periods specified within its term. According to HMRC, the APA's expiration in 2014 precluded its application to subsequent tax years, including 2018. Furthermore, HMRC argued that DPT introduced a distinct statutory framework for addressing profit diversion, separate from the transfer pricing rules underpinning the APA.

This disagreement hinged on the interpretation of Section 220 of the Taxation (International and Other Provisions) Act 2010 (TIOPA). Refinitiv maintained that the APA "related" to the 2018 tax year due to its connection to services provided during its term. HMRC, however, asserted that the APA's relationship to specific chargeable periods was strictly limited to its defined duration.

The Court of Appeal was tasked with resolving this statutory interpretation question and determining whether HMRC's issuance of DPT notices was lawful.

KEY POINTS
OF THE JUDGMENT

COURT FINDINGS

The Court of Appeal upheld the Upper Tribunal's decision, concluding that the APA's temporal and statutory scope was limited to the periods explicitly covered by its terms. The Court emphasized the following key findings:

1. **Temporal Scope of APAs:** The Court determined that APAs are confined to the chargeable periods specified within their terms. The APA in this case explicitly applied to the 2008–2014 period and could not extend its influence to later years.

2. **Annual Nature of Taxation:** The Court reiterated that corporate taxation operates on an annual basis. As such, each tax year is assessed independently, and expired agreements cannot constrain assessments for subsequent years.

3. **DPT as a Distinct Framework:** The Court acknowledged that DPT introduced a separate statutory framework for addressing profit diversion. It noted that while DPT assessments may overlap with transfer pricing principles, they are governed by distinct criteria and methodologies.

The Court rejected Refinitiv's argument that the APA's principles inherently applied to the 2018 tax year due to their connection to earlier transactions. It concluded that extending the APA's scope would undermine the legislative intent behind both APAs and DPT.

KEY POINTS

OF THE JUDGMENT

OUTCOME

The Court ruled in favour of HMRC, affirming the validity of the DPT notices issued for the 2018 tax year. It held that the APA's scope was confined to the periods explicitly defined in its terms and could not influence later assessments. The decision underscored the importance of adhering to the legislative framework governing APAs and the necessity of distinguishing between transfer pricing and DPT assessments.

For Refinitiv, the judgment highlighted the limitations of relying on expired agreements in disputes involving later tax periods. The Court's ruling clarified that APAs, while providing certainty during their term, do not create lasting obligations for tax authorities in subsequent years.

TP METHOD

HIGHLIGHTED (IF ANY)

The Transactional Net Margin Method (TNMM), central to the APA, calculates arm's length pricing by applying a profit margin to a taxpayer's operating costs. This method is widely used for intra-group service transactions where direct comparables are unavailable. In the APA, TNMM allocated a cost-plus markup of 6% to 15% for specific services rendered by Refinitiv UK entities to their Swiss counterpart, Thomson Reuters Global Resources (TRGR).

However, HMRC later deemed TNMM insufficient for reflecting the true value generated by UK entities, particularly regarding intellectual property (IP). It argued that a profit-split methodology better captured the economic contributions of Refinitiv UK to the group's overall profitability. The profit-split approach allocates profits based on functions performed, risks assumed, and assets used by each party—especially critical in cases involving intangibles like IP.

HMRC's reassessment highlighted the evolving application of transfer pricing methods to better align with economic substance. While TNMM provides consistency and simplicity, profit-split methodologies often yield more accurate outcomes in complex arrangements involving high-value intangibles.

This methodological shift created one of the major flashpoints in the case, with Refinitiv asserting that the APA constrained HMRC from applying alternative methods for evaluating profits connected to transactions during the APA's term. HMRC maintained that the APA's expiration freed it to adopt methods better suited to current circumstances, particularly under the Diverted Profits Tax (DPT) regime.

PART 2

SIGNIFICANCE

MAJOR ISSUES

AREAS OF CONTENTION

Several contentious issues emerged during the litigation:

1. **Temporal Scope of the APA:** A central issue was whether the APA's terms extended beyond its expiration to influence later periods. Refinitiv argued that the APA's agreed TNMM approach governed transactions occurring during its term, irrespective of when profits were realized. HMRC countered that the APA was strictly limited to its specified term (2008–2014) and had no bearing on subsequent years.

2. **Interaction with DPT:** The introduction of DPT in 2015 complicated the case. While both transfer pricing and DPT share conceptual overlaps, they are governed by distinct statutory frameworks. Refinitiv contended that DPT notices conflicted with the APA, while HMRC maintained that DPT assessments were independent and aligned with a profit-split methodology better reflecting economic substance.

3. **Economic Substance and Methodological Shift:** A significant contention was HMRC's decision to abandon TNMM in favour of a profit-split approach. Refinitiv argued that this shift retroactively altered the agreed framework for assessing transactions during the APA term. HMRC asserted that the profit-split method more accurately captured the value created by UK entities, particularly regarding IP.

These issues underscore the complexities of applying transfer pricing principles alongside evolving tax frameworks like DPT. They also highlight the challenges of reconciling expired agreements with current legislative demands.

EXPECTED
OR CONTROVERSIAL?

The decision in Refinitiv v HMRC was both anticipated and controversial, reflecting the inherent tension between taxpayer certainty under APAs and the flexibility afforded to revenue authorities under evolving tax laws.

On the one hand, the judgment aligned with established principles regarding the temporal limits of APAs. It reaffirmed that such agreements are confined to the chargeable periods explicitly defined within their terms. This outcome was expected by many tax professionals, given the clear statutory framework governing APAs and their role in providing certainty for defined periods.

On the other hand, the case's intersection with DPT—a relatively recent and aggressive tax measure—added an element of controversy. Critics argued that HMRC's approach undermined the certainty APAs are designed to provide, particularly by retroactively reassessing transactions using a profit-split methodology. The decision highlighted the potential for conflict when longstanding agreements are revisited under newer tax regimes.

Additionally, the case raised broader questions about the balance between taxpayer rights and revenue authority discretion. While HMRC's ability to reassess transactions under DPT was upheld, some viewed the decision as setting a precedent for revenue authorities to circumvent prior agreements by invoking new legislative frameworks.

For multinational enterprises (MNEs), the judgment serves as a cautionary tale about the importance of anticipating legislative changes and ensuring that APAs remain aligned with evolving tax environments. For HMRC, the decision reinforces its authority to challenge historical arrangements when justified by new regulations.

SIGNIFICANCE
FOR MULTINATIONALS

The judgment in Refinitiv v HMRC carries significant implications for multinational enterprises (MNEs), particularly those relying on Advance Pricing Agreements (APAs) to manage transfer pricing risks. It underscores the limitations of APAs in providing long-term certainty, especially in the face of evolving tax regimes like Diverted Profits Tax (DPT).

For MNEs, the case highlights the importance of regularly reviewing and updating APAs to reflect current business operations and legislative changes. Relying on expired agreements can expose companies to reassessment risks, as seen in Refinitiv's case. Moreover, the judgment underscores the need for robust documentation and clear terms in APAs, ensuring that their scope and duration are unambiguous.

The decision also illustrates the challenges of managing tax risks associated with intangible assets, such as intellectual property (IP). HMRC's shift from TNMM to a profit-split methodology reflects a broader trend toward aligning transfer pricing outcomes with economic substance. MNEs must be prepared to justify their methodologies in light of this trend and ensure that their transfer pricing practices withstand scrutiny under both traditional and newer frameworks.

Finally, the case reinforces the value of proactive engagement with tax authorities. Negotiating and renewing APAs that address current risks and regulatory environments can mitigate disputes. For MNEs, this involves adopting a forward-looking approach to tax risk management, leveraging expertise to navigate complex international tax landscapes.

SIGNIFICANCE

FOR REVENUE SERVICES

From the perspective of revenue authorities, the decision strengthens their ability to enforce transfer pricing and DPT regulations while maintaining flexibility in applying new methodologies. It reaffirms that APAs, while binding during their term, do not preclude authorities from reassessing transactions under later tax regimes.

The judgment highlights the importance of aligning transfer pricing practices with evolving tax frameworks. HMRC's application of a profit-split methodology in this case reflects a broader emphasis on capturing economic substance, particularly in transactions involving high-value intangibles. This approach may inspire other revenue authorities to adopt similar methodologies, especially in cases where traditional approaches like TNMM fail to reflect the full value of contributions.

Moreover, the case underscores the strategic role of DPT as a tool for addressing profit diversion. By upholding HMRC's discretion to issue DPT notices, the Court of Appeal reinforced the legitimacy of this aggressive tax measure in countering base erosion and profit shifting.

For revenue authorities, the decision also highlights the importance of clear communication with taxpayers. HMRC's ability to justify its methodological shift and align it with legislative objectives was critical to its success in this case. As tax frameworks continue to evolve, revenue authorities must ensure that their assessments are robust, transparent, and defensible.

RELEVANT CASES

GLENCORE ENERGY VS HMRC

This case relates to Refinitiv v HMRC through its exploration of the Diverted Profits Tax (DPT) and its application to transactions involving profit shifting. It highlights the independence of DPT from traditional transfer pricing rules, a key point in Refinitiv's dispute. Both cases emphasize the importance of demonstrating economic substance in intercompany pricing arrangements. Additionally, Glencore's challenge of HMRC's DPT notices mirrors Refinitiv's arguments about the interplay between APAs and newer tax frameworks.

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X HOLDING BV VS NETHERLANDS

This case shares similarities with Refinitiv v HMRC in its examination of the temporal limits of tax agreements. X Holding BV argued that historical agreements should influence future periods, a contention also made by Refinitiv regarding its expired APA. The European Court of Justice (ECJ) ruled that agreements are bound by their defined terms, reinforcing the precedent applied in Refinitiv. Both cases underscore the need for ongoing updates to tax agreements to align with legislative changes.

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GE CAPITAL CANADA VS CANADA

This case is relevant due to its examination of transfer pricing methodologies and the allocation of profits in cross-border transactions. GE Capital argued that its pricing complied with the arm's length principle, similar to Refinitiv's defense of its APA-based TNMM. Both cases highlight disputes over whether traditional transfer pricing methods adequately capture the economic substance of intercompany arrangements under modern regulatory scrutiny.

These connections emphasize how Refinitiv v HMRC fits within broader international tax and transfer pricing jurisprudence.

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PART 3

PREVENTION

ENGAGING EXPERTS

Transfer pricing experts play a crucial role in navigating the complexities of international tax disputes like Refinitiv v HMRC. Their expertise ensures compliance with applicable laws, mitigates risks, and strengthens the taxpayer's position during audits or litigation.

Experts assist in designing robust Advance Pricing Agreements (APAs) that align with current business operations and regulatory frameworks. They also help multinationals select and defend appropriate transfer pricing methodologies, ensuring that profit allocations reflect economic substance.

In disputes, transfer pricing professionals provide critical insights into the interpretation of agreements, such as APAs, and their interaction with newer tax measures like Diverted Profits Tax (DPT). Their ability to produce detailed analyses, economic justifications, and comprehensive documentation can significantly influence case outcomes.

Moreover, engaging experts early in the tax planning process enables multinationals to anticipate and adapt to legislative changes. This proactive approach reduces the likelihood of disputes and fosters cooperative relationships with tax authorities.

Ultimately, the value of transfer pricing experts lies in their ability to balance compliance with strategic tax planning, ensuring that multinationals manage risks effectively while optimizing their tax positions.

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX RISK MANAGEMENT PROCESS

Implementing a comprehensive tax risk management process is essential to identify, assess, and mitigate tax risks associated with cross-border transactions. This process should involve:

- Regular reviews of intra-group transactions to ensure they have genuine economic substance.
- Proactive engagement with tax authorities to seek clarity on the application of anti-abuse rules.
- Thorough documentation of the business rationale for each transaction to support

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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 the X BV case.

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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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