



HIGH COURT OF AUSTRALIA

21 December 2016

ELECNET (AUST) PTY LTD (AS TRUSTEE FOR THE ELECTRICAL INDUSTRY
SEVERANCE SCHEME) v COMMISSIONER OF TAXATION OF THE COMMONWEALTH
OF AUSTRALIA
[2016] HCA 51

Today the High Court unanimously dismissed an appeal from the Full Court of the Federal Court of Australia. The High Court held that the Electrical Industry Severance Scheme ("the EISS") is not a unit trust within the meaning of Div 6C of Pt III of the *Income Tax Assessment Act 1936* (Cth) ("the ITAA").

The appellant ("ElecNet") was the trustee of the EISS pursuant to a trust settled by deed. Under the EISS, employers within the electrical contracting industry could become members of the scheme and, upon doing so, became obliged to make payments to ElecNet. These payments were credited by ElecNet to accounts in the name of each of the employees in respect of whom a payment was made. The deed contemplated that, at such time as an employee's employment was terminated, ElecNet was to make a severance or redundancy payment to that employee.

ElecNet requested a private ruling from the respondent ("the Commissioner") as to whether the EISS was a public trading trust for the purposes of Div 6C. The Commissioner ruled that the EISS was not a public trading trust, on the ground, among others, that the EISS was not a unit trust within the meaning of Div 6C. ElecNet's objection to the ruling was disallowed in full by the Commissioner.

ElecNet appealed to the Federal Court of Australia. At first instance, the Court allowed the appeal, holding that the EISS was a unit trust for the purposes of Div 6C. The Commissioner appealed to the Full Court of the Federal Court of Australia. The Full Court unanimously allowed the Commissioner's appeal, holding that the EISS was not a unit trust for the purposes of Div 6C.

By grant of special leave, ElecNet appealed to the High Court. The Court held that the EISS was not a unit trust for the purposes of Div 6C because any interest created by the deed in favour of employees could not be characterised as a "unit". The Court also held that the meaning of "unit trust" in Div 6C accorded with the common usage of the expression "unit trust"; that is, a trust whereby the beneficial interest in the trust estate is divided into units as discrete parcels of rights, analogous to shares, which, when created or issued, are to be held by the persons for whose benefit the trustee maintains and administers the trust estate. The inclusive definition of "unit" in Div 6C did not expand the meaning of "unit trust" for the purposes of that Division.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*