



HIGH COURT OF AUSTRALIA

Public Information Officer

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W.R. CARPENTER HOLDINGS PTY LIMITED v COMMISSIONER OF TAXATION
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Two companies which allegedly owe income tax in relation to various international transactions could not compel the Commissioner to provide certain information which they sought in connection with their appeals against their tax bills, the High Court of Australia held today.

The WR Carpenter companies are members of Perth businessman Ric Stowe's Griffin Group of companies. The group disputed 44 income tax assessment notices issued by the Australian Tax Office (ATO) in 2004 to seven members of the group in respect of income between 1986 and 2002, following an audit of the group. Decisions on 42 assessments are pending in the Administrative Appeals Tribunal. With the other two, both involving international transactions, the Carpenter companies instituted proceedings in the Federal Court of Australia by way of appeal under the *Taxation Administration Act* (TAA). Those appeals are also still pending. Carpenter Holdings claimed that an assessment for 1986-87 was excessive while Carpenter Australia disputed the assessment for 1992-93. The 1987 assessment concerned a transaction in which Carpenter Holdings sold to the Cyprus-based Griffin company, Carpenter Holdings International Limited (CHIL), shares in other companies in the group. The cost was \$129 million of which \$79 million was to be paid after 15 years. CHIL was not charged any interest. The ATO deemed the interest that would have been due over that period was \$167.3 million, including \$17.9 million for 1986-87. The 1993 assessment involved loans by Carpenter Australia to a group company based in the United States. No interest was charged and the loans were written off in the 1993 and 1994 years. The ATO deemed total interest payable as \$4.77 million, including \$986,180 in 1992-93. It said tax was owed on both transactions as neither was carried out "at arm's length". Under the TAA, the companies had the burden of proving that assessments were excessive.

By motions filed in the Federal Court on 19 May 2006, the Carpenter companies sought orders that the ATO provide certain particulars of matters taken into account in determinations that sections 136AD(1) or 136AD(2) of the *Income Tax Assessment Act* should apply to the international transactions so as to produce the interest deemed or imputed to have been paid to the companies. The motions were dismissed by Justice Kevin Lindgren on 20 September 2006. The ATO had already filed a statement outlining its contentions and the facts and issues in the case. Appeals to the Full Court against Justice Lindgren's ruling were dismissed on 11 July 2007. The companies appealed to the High Court.

The Court unanimously dismissed the appeals. It held that the requests for information made by the companies were not directed to any issue that arose in the appeals and that provision of the information as requested was neither necessary nor appropriate for the resolution of the issues in the appeals.

- *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.*