



HIGH COURT OF AUSTRALIA

9 November 2016

VAUGHAN RUDD BLANK v COMMISSIONER OF TAXATION
[2016] HCA 42

Today the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia. The High Court held that a lump sum paid to a taxpayer in instalments pursuant to an incentive profit participation agreement after termination of his employment was income according to ordinary concepts, and therefore part of the taxpayer's assessable income under s 6-5 of the *Income Tax Assessment Act 1997* (Cth).

The taxpayer ("Mr Blank") was employed by various companies within the Glencore Group. Glencore International AG ("GI"), a company within the Glencore Group, operated employee profit participation plans for the benefit of certain employees of GI and its subsidiaries. Mr Blank was selected to participate in such a plan.

His participation was governed by various agreements at various stages. Relevantly, under a profit participation agreement executed in 1999 ("PPA 1999"), he was granted claims to a share of GI's profits in the form of a contractual claim and *Genussscheine* ("GS"), which were profit sharing certificates provided for under Swiss law. Under a related agreement, Mr Blank was issued shares in Glencore Holding AG ("GH"), the ultimate holding company of the Glencore Group.

The PPA 1999 was relevantly replaced in 2005 by another agreement, the IPPA 2005. All GS or equivalents issued under previous agreements became "Profit Participation Units" ("PPU") under the IPPA 2005. Under the IPPA 2005, Mr Blank was granted "deferred compensation" such that if he ceased employment with the Glencore Group, and executed a declaration under which he relinquished his claims under his PPU and assigned his shares in GH, he would be entitled to a lump sum paid in instalments.

Mr Blank's employment with the Glencore Group was terminated on 31 December 2006. He relinquished his claims under his PPU and assigned his shares in GH in consideration of the payment of USD 160,033,328.25 in 20 quarterly instalments ("the Amount").

Edmonds J of the Federal Court of Australia held that the Amount was income according to ordinary concepts because it was deferred compensation for services rendered by Mr Blank. That decision was upheld by a majority of the Full Court of the Federal Court. By grant of special leave, Mr Blank appealed to the High Court.

The High Court unanimously held that the Amount was paid as deferred compensation for the services Mr Blank had performed for the Glencore Group and was therefore income according to ordinary concepts. The Amount was not assessable as a capital gain because it did not represent, as Mr Blank contended, the proceeds of the exploitation of interconnected rights that conferred on him a right to receive, in the future, a proportion of the profit of GI.

- *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.*