HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	B48/2024
File Title:	G Global 120E T2 Pty Ltd as trustee for the G Global 120E AU
Registry:	Brisbane
Document filed:	Form 27F - Respondents' Outline of oral argument
Filing party:	Defendant
Date filed:	08 May 2025

Important Information

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IN THE HIGH COURT OF AUSTRALIA

BRISBANE REGISTRY

No. B48/2024

BETWEEN: **G GLOBAL 120E T2 PTY LTD ATF THE G GLOBAL 120E AUT**

Appellant

and

COMMISSIONER OF STATE REVENUE

Respondent

No. B49/2024

BETWEEN: **G GLOBAL 180Q PTY LTD ATF THE G GLOBAL 180Q AUT**

Appellant

and

COMMISSIONER OF STATE REVENUE

Respondent

No. B50/2024

BETWEEN: **G GLOBAL 180Q PTY LTD ATF THE G GLOBAL 180Q AUT**

Appellant

and

COMMISSIONER OF STATE REVENUE

Respondent

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Internet publication

1. This outline is in a form suitable for publication on the internet.

Part II: Propositions to be advanced in oral argument

Question 2: Section 5(3) of the ITA Act is supported by the external affairs power

2. The Commonwealth may implement treaty obligations in part: *Industrial Relations Act Case* (1996) 187 CLR 416, 488–9 **(JBA vol 13, tab 84, 5127–8**) (**RS [13]**).

3. The focus of the German agreement is on certain kinds of Commonwealth taxes. The effect of s 5(3) of the ITA Act is that s 5(1) implements the German agreement in part (**RS [15]–[20]**).

4. As confined by s 5(3), the implementation of art 24 by s 5(1) only displaces discriminatory income tax and fringe benefits taxes, leaving other discriminatory taxes untouched.

5. That being the case, s 5 remains reasonably capable of being seen as appropriate and adapted to the purpose of implementing art 24 and the other provisions of the German agreement. The word "inconsistent" in s 5(3) requires no different conclusion. There is no analogy with *Burgess* (1936) 55 CLR 608 (**JBA vol 10, tab 71**) (**RS [21]–[23]**).

6. Question 2 should be answered "yes". Even if the answer is "no", that does not mean that s 5 reverts to its pre-amendment form. The validity of s 5(3) with respect to Commonwealth and Territory laws is not challenged. The Appellants' reliance on cases in which the amendment would result in a law that was wholly beyond power is misplaced: compare *Clyne* (1958) 100 CLR 246 (**JBA vol 5, tab 43**); *Pacific Coal* (2000) 203 CLR 346 (**JBA vol 11, tab 74**). If s 5(1) no longer implements art 24, that does not assist the Appellants (**RS [25]–[26]**).

Question 3: Section 5(3) is not effective to remove inconsistency from 1 January 2018

7. Question 3 can only be answered "yes" if *Metwally* (1984) 158 CLR 447 **(JBA vol 12, tab 82**) is reopened and overruled. The Appellants embrace *Metwally* and the Commissioner does not seek to reopen it. Question 3 should be answered "no".

Question 4: Section 5(3) did not acquire property from the Appellants

8. Despite their adoption of *Metwally* for the purposes of Question 3, the Appellants seek to answer Question 4 on the premise that *Metwally* is wrong. In answering Question 4, it is necessary to begin from the proposition that *Metwally* is correct. The legal and practical

operation of a law cannot be ascertained on the premise that it operates in a way prohibited by the Constitution. But in either event the answer to Question 4 is "no".

9. **First**, s 5(3) has not acquired any property. It does not authorise or effect an acquisition of property: *Cunningham* (2016) 259 CLR 536, [58] **(JBA vol 7, tab 51, 2571**). Any acquisition of property was effected by the new Queensland provisions (**RS [32]–[33]**).

10. It is no answer to say that s 5(3) attached an "infirmity" to any claims the Appellants had. There is no analogy with *Smith v ANL Ltd* (2000) 204 CLR 493 (**JBA vol 11, tab 77**). Section 5(3) effected no modification of any rights the Appellants had. At most, it merely diminished the value of those rights. Accepting the Appellants' submission would expand the concept of "acquisition" far beyond the existing authorities.

11. **Second**, s 51(xxxi) is not concerned with laws relating to the imposition of taxation (**RS [34]–[36]**).

    (a) The imposition of a Commonwealth tax is not subject to s 51(xxxi) because it is inconsistent or incongruous with just terms compensation: *Australian Tape Manufacturers* (1993) 176 CLR 480, 509 (**JBA vol 4, tab 38, 1325**); *Theophanous* (2006) 225 CLR 101, [60] (**JBA vol 12, tab 81, 4887**).

    (b) Even if State legislatures were subject to s 51(xxxi), State laws imposing taxes would fall outside it for the same reason. Section 5(3) is further removed still: it is a Commonwealth law that allows for the possibility that a State might "impose[] a tax" (other than "Australian tax"). It does not fall within the scope of s 51(xxxi).

12. **Third**, any claims the Appellants had were extinguished by s 10A of the Limitation Act or ss 36(2) and 188(2) of the Taxation Administration Act before s 5(3) was enacted. The Appellants accept this, subject to those provisions applying in federal jurisdiction (**AS [53], [57]**). They would have applied in federal jurisdiction, with the result that the Appellants had no "property" for the purposes of s 51(xxxi) (**RS [38]–[46]**).

    (a) The provisions would be picked up by s 79(1) of the Judiciary Act. They regulate the exercise of jurisdiction and determine rights and obligations: *Rizeq* (2017) 262 CLR 1, [22], [83], [89], [100] **(JBA vol 11, tab 75, 4458, 4476–7, 4478–9, 4482–3**); *Masson* (2019) 266 CLR 554, [38] **(JBA vol 9, tab 64, 3351**); Judiciary Act, ss 79(2)–(4) **(JBA vol 3, tab 64, 744–5**) (**RS [38]–[41]**).

    (b) If the provisions would instead apply of their own force, they would not be

inconsistent with s 64 of the Judiciary Act or s 5(1) of the ITA Act: *Rizeq* (2017) 262 CLR 1, [46] **(JBA vol 11, tab 75, 4464**); *Antill Ranger* (1955) 93 CLR 83, 99–100 **(JBA vol 4, tab 33, 1117–8**). The Appellants have failed to demonstrate that s 64 is a law with respect to external affairs (**RS [42]–[45]**).

13. **Fourth**, in any event, the Appellants had no common law claims in restitution because the amounts were paid in discharge of statutory debts: Taxation Administration Act, ss 30(1)(e) and 45(1); *ACN 005 057 349* (2017) 261 CLR 509, [87] **(JBA vol 5, tab 42, 1701**). Copies of the assessment notices would be conclusive evidence of the proper making of the assessments and that the amounts and all particulars were correct: Taxation Administration Act, s 132; *Futuris* (2008) 237 CLR 146 **(JBA vol 8, tab 56**).

14. The Appellants' rights of appeal under the Taxation Administration Act required the Court to apply the law at the time of the hearing and were therefore inherently susceptible to legislative change (**RS [47]–[49]**).

Question 4A: New Queensland provisions require the appeals to be disallowed

15. Being appeals by way of rehearing, the Court must apply s 104 of the Land Tax Act and s 189 of the Taxation Administration Act. Those provisions require the appeals to be disallowed. Question 4A should be answered "yes" (**RS [28]–[29], [50]**).

Question 4B: New Queensland provisions are not inconsistent with s 5(1)

16. Section 5(3) is retrospective rather than retroactive. But in either case, s 5(3) avoids any inconsistency between s 5(1) and the new Queensland provisions (**RS [51]**).

17. Section 5(3) was in force when the new Queensland provisions were enacted. Section 109 has never operated on the new Queensland provisions. *Metwally* says nothing about their operation. Question 4B should be answered "no" (**RS [30], [51]**).

Questions 5 and 6: Relief and costs

18. The appeals should be disallowed. Costs should follow the event. The Appellants have not shown that the Commissioner acted unreasonably. A change in legislation during litigation does not warrant a costs order: *Plaintiff M68/2015* (2016) 257 CLR 42 at [55].

Dated: 8 May 2025

Gim Del Villar KC **Felicity Nagorcka** **Mohammud Jaamae Hafeez-Baig** **Kent Blore**