



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN: No. B48/2024
**G GLOBAL 120E T2 PTY LTD as trustee for
THE G GLOBAL 120E AUT**
Appellant
and
COMMISSIONER OF STATE REVENUE
Respondent

BETWEEN: No. B49/2024
**G GLOBAL 180Q PTY LTD as trustee for
THE G GLOBAL 180Q AUT**
Appellant
and
COMMISSIONER OF STATE REVENUE
Respondent

BETWEEN: No. B50/2024
**G GLOBAL 180Q PTY LTD as trustee for
THE G GLOBAL 180Q AUT**
Appellant
and
COMMISSIONER OF STATE REVENUE
Respondent

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN: No. M60/2024
FRANCIS STOTT
Plaintiff
and
THE COMMONWEALTH OF AUSTRALIA
First Defendant
and
THE STATE OF VICTORIA
Second Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF SOUTH AUSTRALIA (INTERVENING)**

Part I: CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

Part II: OUTLINE OF ORAL SUBMISSION

***Metwally* should not be reopened or overruled**

2. Section 5(3) of the *International Tax Agreements Act 1953* (Cth) (**ITAA**) is effective, together with s 104 of the *Land Tax Act 2010* (Qld) and s 189 of the *Taxation Administration Act 2001* (Qld) (**TTA (Qld)**), and s 106A of the *Land Tax Act 2005* (Vic), to remove the inconsistency between the state tax laws and s 5(1) of the ITAA, such that no occasion arises for the Court to consider the correctness of *University of Wollongong v Metwally* (1984) 158 CLR 447 (**Metwally**), (V12, T82); SA, [10].¹
3. However, should the Court entertain the alternative pathway identified by the Commonwealth (CS(S), [31]-[37]), then *Metwally* should not be reopened for the following reasons:
 - 3.1. it is of long standing and has been repeatedly affirmed by this Court (SA, [11]);
 - 3.2. it achieves a useful result because it promotes legal certainty for citizens and polities alike: *Metwally*, 457 (Gibbs CJ) and 476 (Deane J); SA, [11] and [14];
 - 3.3. it is not inconvenient because an inadvertent historical inconsistency can be cured by the collective action of the Commonwealth and the States: *Metwally*, 469 (Murphy J) and 480 (Deane J); *Western Australia v The Commonwealth (Native Title Act Case)* (1995) 183 CLR 373 (V13, T86), 455 (Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ); and,
 - 3.4. it is not plainly wrong. It does not depend upon assigning an individual rights purpose to s 109: *Metwally*, 457-458 (Gibbs CJ) and 477 (Deane J). Rather, it resolves an important question about how conflicting Commonwealth and State laws are to be resolved in a manner that promotes legal certainty: *Dickson v The Queen* (2010) 241 CLR 491 (V7, T54), 503-504 [19] (French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ).
4. If *Metwally* is reopened, then it should not be overruled.

¹ The Joint Book of Authority references are to the JBA filed in the G Global proceedings.

Sections 64 and 79 of the *Judiciary Act*

5. G Global’s contention that s 10A(3) of the *Limitation of Actions Act 1974* (Qld) (**LAA (Qld)**) and ss 36(2) and 188 of the TAA (Qld) are invalid by virtue of inconsistency with s 64 of the *Judiciary Act 1903* (Cth) (**Judiciary Act**) fails to grapple with the extended operation of s 79 brought about by the insertion of subs (2)-(4) and the limited operation of s 64 in so far as it purports to govern the substantive rights of the States: SA, [16]-[17].

Section 79

6. Section 79 was amended in response to this Court’s decision in *British American Tobacco Australia Ltd v Western Australia* (2003) 217 CLR 30 (**BAT**) (V5, T40), by the insertion of subs (2)-(4). Section 79(2) expressly prevails over other provisions of the *Judiciary Act*, such that if a provision falls within s 79(2)-(4) no further question about inconsistency with s 64 arises: SA, [18]-[22].

Section 64

7. It has long been doubted that s 64 operates to alter the substantive rights of the States: *Commonwealth v Evans Deakin Industries Ltd* (1986) 161 CLR 254 (V5, T45), 263 (Gibbs CJ, Mason, Wilson, Deane and Dawson JJ). It was unnecessary for the Court to resolve this question in *BAT*, 66 [85]-[87], [172] (McHugh, Gummow and Hayne JJ; Callinan J agreeing); SA, [24].
8. The Commonwealth does not possess general legislative authority to alter the substantive rights of the States, including those rights to be determined in the exercise of federal jurisdiction: *Rizeq v Western Australia* (2017) 262 CLR 1 (**Rizeq**) (V11, T75), 21 [46] (Bell, Gageler, Keane, Nettle and Gordon JJ), 68 [189] (Edelman J). No such power can be derived from ss 51(xxxix), 75, 76, 77, or 78 (or the laws made thereunder) of the *Constitution*: SA, [28].
9. The disapplication of s 64 proposed by G Global, namely that despite the absence of a general Commonwealth power s 64 must be given substantive operation with respect to the rights of the States that “lie within the reach of the legislative power”, is contrary to the conclusion reached by a majority of this Court: *BAT*, [85]-[87], [172] (McHugh, Gummow and Hayne JJ; Callinan J agreeing); cf *Maguire v Simpson* (1977) 139 CLR 362 (V9, T63), 402 (Mason J).

Application of ss 64 and 79

10. For these reasons, s 10A(3) of the LAA (Qld) and ss 36(2) and 188 of the TAA (Qld) are not inconsistent with s 64 because either:

10.1. they are provisions regulating the exercise of jurisdiction that are picked up by s 79(1), and because they are applicable “in connection with a suit relating to the recovery of an amount paid in connection with a tax that a law of State ... invalidly purported to impose” they are not prevented by s 64 (or any other provision of the *Judiciary Act*) from being given binding operation in the G Global proceedings (s 79(2)); or,

10.2. they are laws governing the substantive rights and duties of the parties to the G Global proceedings such that s 64 is incapable of operating so as to diminish the substantive rights of Queensland.

Dated: 8 May 2025



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