



HIGH COURT OF AUSTRALIA

Manager, Public Information

30 September 2009

ALCAN (NT) ALUMINA PTY LTD v COMMISSIONER OF TERRITORY REVENUE
[2009] HCA 41

Under the *Taxation (Administration) Act* (NT) the acquisition of shares in a land-holding company can be assessed for stamp duty by reference to the value of the land held by the company where that value exceeds 60 per cent of the value of the company's assets. The High Court held today that the Act required the value of leases held by a company to be assessed under the Act without regard to options to renew those leases.

In January 2001 Alcan acquired 70 per cent of the issued capital in Gove Aluminium Ltd (GAL) from CSR Investments Pty Ltd. At the same time GAL entered into a share buy-back agreement with AMP Life Ltd for the remaining 30 per cent of its shares. By these two transactions Alcan became the sole shareholder in GAL. The total value of the acquisition was \$740.1 million. In 2005 the Commissioner of Territory Revenue assessed Alcan's total liability in respect of the transactions at \$47,517,997.00, made up of stamp duty calculated at \$31,050,000.00, based on the value of "land" which had passed from GAL to Alcan under the transactions, together with a penalty of \$16,467,997.00.

The Commissioner's assessment was made under Div 8A of Part III of the *Taxation (Administration) Act* (NT) (the Act) (which has since been renamed the *Stamp Duty Act* (NT)). According to the then-Treasurer of the Northern Territory, Div 8A had been inserted into the Act to "introduce measures to counter the avoidance of conveyance duty" in circumstances where shares in a land-holding corporation were sold, and stamp duty paid only on the share transaction rather than on the value of the land held by the corporation. The new provisions only apply where the value of the land holdings (including leases) of the corporation exceeds 60 per cent of the value of its assets.

At the time of Alcan's acquisition of GAL shares GAL held leases for the operation of a bauxite mine and alumina refinery, a township and associated facilities. Most of the leases were granted for a term of 42 years commencing in 1969, with an option to renew for a further 42 years. The Commissioner assessed the value of the options to renew the leases in determining that stamp duty was payable under Div 8A and in calculating the amount of stamp duty payable by Alcan. Alcan's objections to the assessment were disallowed by the Commissioner. Alcan appealed and was successful before the primary judge but the Commissioner's appeal to the Court of Appeal of the Supreme Court of the Northern Territory was allowed and the Commissioner's assessment reinstated. Alcan was granted special leave to appeal to the High Court.

The Court had to determine whether the "land" referred to in Div 8A of Part III of the Act included an option to renew a lease. The definition of "land" in section 4 of the Act includes "a lease of land". The definition of "lease" specifically excludes "an option to renew a lease". The definitions in section 4 of the Act apply throughout the Act "unless the contrary intention appears". The Court of Appeal concluded that there was a contrary intention for Div 8A of Part III of the Act, such that "land" included "an option to renew a lease". This conclusion depended upon that Court's analysis of the history of the legislation from 1978 to 2000, particularly its conclusion that the purpose of the relevant amendments to Div 8A was to increase the capacity of the Northern Territory to raise revenue through the imposition of stamp duty.

The High Court considered that the Court of Appeal had not paid sufficient attention to the express terms of the legislation. The definition of "land" in section 4 of the Act included "lease". The words "'lease' ... does not include ... an option to renew a lease" bore their natural and ordinary meaning, which was not displaced by contextual or historical considerations. The general purpose of the Act to raise revenue was insufficient to support an intention to exclude a clearly expressed definition and substitute a quite different meaning. The Court allowed Alcan's appeal and ordered that the Commissioner's appeal to the Court of Appeal should be dismissed with costs.

- *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.*