

**COMMISSIONER OF STATE REVENUE v PLACER DOME INC
(NOW AN AMALGAMATED ENTITY NAMED BARRICK GOLD
CORPORATION) (P6/2018)**

Court appealed from: Court of Appeal of the Supreme Court of
Western Australia
[2017] WASCA 165

Date of judgment: 11 September 2017

Special leave granted: 16 February 2018

The appellant (“the Commissioner”) argues that the critical issue in this appeal is whether the respondent (“Placer”) had any goodwill of material value when it was acquired in a takeover as this affected its valuation and whether or not duty was payable on the sale.

Placer submits that the critical issue is rather whether the value of the land assets held by Placer at the time it was acquired exceeded the statutory threshold in Section 76ATI of the *Stamp Act* 1921 (WA) (“the Act”).

The principal facts are not in dispute. Placer was a substantial Canadian gold mining enterprise with land mining tenements around the world, including in Western Australia (“WA”). On 4 February 2006 Barrick Gold Corporation Inc (“Barrick”) was successful in its takeover of Placer for a price that ascribed a value to the total property of Placer of \$15.3 billion. The acquisition was the largest transaction of its kind in the gold industry and created the world’s largest goldmining business.

Part III BA of the Act imposes duty on the acquisition of a majority interest in a corporation that owns land in Western Australia, provided that certain thresholds as to the value of its underlying landholdings are met. Before any duty is payable, the land-holder must have land within WA valued at \$1 million, and the value of all land must be 60% or more of the value of total property to which the land-holder is entitled less excluded property. If these criteria are satisfied, and duty is payable, the amount of duty is assessed by reference to the value of land and chattels situated in WA. There is no dispute that the value of Placer’s property for the purposes of this provision was \$12.8 billion and that to be a land-holder (and therefore to attract the imposition of duty) the value of its land had to equal or exceed \$7.68 billion (60%).

In its consolidated financial statements Barrick nominated ‘fair value’ amounts to Placer’s tangible assets and allocated the residual balance of the purchase price (\$6.5 billion) to “goodwill”.

Following the acquisition, an assessment of duty was made by the Commissioner pursuant to the provisions of the Act requiring Placer to pay duty of just under AUD \$55 million, on the basis that the value of its land in WA was \$1,015,900,000. Placer objected to the assessment but in April 2014 the Commissioner disallowed the objection. Placer then made an application to the State Administrative Tribunal (“the Tribunal”) for review of the Commissioner’s decision. The Tribunal accepted the

Commissioner's argument that there was no material goodwill in determining the land value and assessed duty on the acquisition by Barrick of Placer accordingly. The Tribunal found in favour of the Commissioner and the assessment was affirmed.

Placer appealed to the Court of Appeal. The appeal was allowed on the basis that the Tribunal had failed to distinguish the value of the land from the value of Placer's business as a going concern. It followed that Placer had material goodwill. The Commissioner disputed the goodwill allocation. It argued that Placer's only material revenue was that from the sale of (mostly) gold, sold as refined metal. The undisputed evidence of Placer's experts was that the prices of gold are set by transactions on international metal exchanges, to which the identity of the parties - whether as vendor or as purchaser- are irrelevant. There is no premium or discount on the traded price according to the reputation or capability of the miner, smelter or vendor; gold miners (such as Placer and Barrick) are "price takers, not price makers". Therefore there is no goodwill of material value unrelated to the use of its land for mining.

The Court of Appeal set aside the Tribunal's order dismissing Placer's review application. The matter was remitted to the Tribunal for reconsideration in accordance with the Court's reasons for decision and certain specified directions as to matters of valuation.

The Commissioner has appealed to the High Court. The Commissioner seeks to rely on a "top-down" approach to valuing the land, which starts with the value of the entire business, assumes there is no material goodwill or other intangible value within Placer's going concern business, and treats the residual as land. Placer disputes this methodology. Placer also argues that the Commissioner's case in this Court is different to the case mounted in the court below.

The grounds of appeal include that the Court of Appeal:

- Should have held that the Respondent had failed to make out its case that the value of "all land to which it was entitled" was less than 60% of the value of "all property to which it was entitled" at the relevant date;
- Erred in concluding (at [91]-[92]) that the Tribunal erred in adopting the approach of valuing the land by deducting the value of the non-land assets from the value of the Respondent's business;
- Erred in concluding (at [95]-[97]; [245]-[247]) that there was evidence to support a finding that the Respondent's business had material goodwill.