HIGH COURT OF AUSTRALIA

Public Information Officer

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PERMANENT TRUSTEE AUSTRALIA LIMITED v COMMISSIONER OF STATE REVENUE

The States could impose stamp duty and other taxes on Commonwealth places, the High Court of Australia held today as it upheld the validity of the *Commonwealth Places (Mirror Taxes) Act.*

In 1998 Permanent Trustee entered into a development agreement with Australia Pacific Airports (Melbourne) Pty Ltd (APAM) and Folkestone Limited for the building of a hotel at Melbourne Airport. Permanent sub-leased the premises from APAM – which leased the airport land from the Commonwealth – and procured Hilton International to operate a four-star hotel. In March 2001, the Commissioner assessed stamp duty on the sub-lease at $762,583.20. The assessment was made under Victoria's *Stamps Act,* which applied in relation to Commonwealth places by reason of the *Mirror Taxes Act.* Permanent's objection to the assessment is before the Victorian Supreme Court. In October 2003 the High Court ordered that the part of the objection concerning the validity of the *Mirror Taxes Act* be removed into that Court.

Section 52(i) of the Constitution gives the Commonwealth Parliament exclusive power to make laws with respect to Commonwealth places. The *Mirror Taxes Act* was part of a package of Commonwealth legislation dealing with the consequences of the High Court's 1996 decision in *Allders International Pty Ltd v Commissioner of State Revenue (Victoria)* concerning stamp duty on an area of Melbourne Airport leased to a duty-free store. The Court held, by a 5-2 majority, that laws such as Victoria's *Stamps Act* did not apply to Commonwealth places. The *Mirror Taxes Act* was designed to ensure that Commonwealth places within States were not immune from State taxes of general application by endowing such a tax law with the character of a Commonwealth law to the extent it applies to Commonwealth places.

The High Court was called on to decide on several grounds whether the *Mirror Taxes Act* was invalid or ineffective to apply State tax laws to Commonwealth places. One ground was whether, contrary to section 55 of the Constitution, the Act is a law imposing tax which deals with a matter other than the imposition of tax. The Court held that although the *Mirror Taxes Act* applied both taxing provisions and provisions for the assessment, collection and recovery of that tax, the inclusion of the latter class of provisions did not offend section 55. Those provisions did not deal with a subject matter other than the imposition of taxation.

Similarly, the *Mirror Taxes Act* was not invalid as a law imposing taxation and dealing with more than one subject of taxation. Although the Act applied a range of different State tax laws, it has been formulated with respect to one subject matter, namely the application of State tax laws to Commonwealth places, and thereby dealt only with one subject of taxation.

By a 5-2 majority, the High Court rejected arguments that the Act was invalid for discriminating between States or parts of States, contrary to section 51(ii) of the Constitution, and invalid on the ground that the Act as a revenue law gives preference to one State or part thereof over another State or part thereof, contrary to section 99 of the Constitution. The Court decided that while the Act's scheme may produce differences in the rate of tax applied in Commonwealth places in each State that was due to differences existing between the tax regimes from State to State. A Commonwealth place is treated for tax purposes in the same way as other parts of the State in which it is located. The Court ordered Permanent to pay the costs of the case before it and remitted the cause to the Victorian Supreme Court to determine the remaining issues.

- *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.*