



HIGH COURT OF AUSTRALIA

5 August 2015

AUSNET TRANSMISSION GROUP PTY LTD v THE COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA

[2015] HCA 25

Today the High Court, by majority, dismissed an appeal from a decision of a Full Court of the Federal Court of Australia, which held that certain charges paid by the appellant were outgoings of a capital nature and therefore not tax deductible.

The appellant purchased the assets of a State-owned electricity transmission business, Power Net Victoria ("PNV"). The assets included an electricity transmission licence held by PNV which had been issued pursuant to Pt 12 of the *Electricity Industry Act 1993* (Vic) ("the transmission licence").

The Victorian Governor in Council, by Order made pursuant to s 163AA(1) of the Act, had imposed specified charges on the holder of the transmission licence. When the appellant became the holder of the transmission licence, it became liable to pay the charges by force of the Act. In addition, the relevant asset sale agreement expressly required that the appellant pay the charges to the State of Victoria and refrain from contesting their validity. Separately, it required the appellant to pay a specified "total purchase price" to PNV for its assets.

Section 8-1(2)(a) of the *Income Tax Assessment Act 1997* (Cth) provides that a loss or outgoing of capital, or of a capital nature, is not tax deductible under that section. Relevantly, the appellant claimed that the payments of the specified charges were deductible from its assessable income. The respondent, the Commissioner of Taxation of the Commonwealth of Australia, disallowed the deductions claimed and the appellant's subsequent objection.

At first instance, the Federal Court affirmed the Commissioner's position. On appeal to a Full Court, the majority held that the specified charges were not deductible because they were of a capital nature and dismissed the appeal.

By grant of special leave, the appellant appealed to the High Court. By majority, the Court held that, from a practical and business point of view, the appellant assumed the liability to make the payments in order to acquire the transmission licence and the other assets of PNV. The payments of the charges were outgoings of a capital nature and were therefore not tax deductible.

- *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.*