



HIGH COURT OF AUSTRALIA

9 August 2017

COMMISSIONER OF TAXATION v KAMAL JAYASINGHE [2017] HCA 26

Today the High Court unanimously allowed an appeal from the Full Court of the Federal Court of Australia. The High Court held that the taxpayer, Mr Jayasinghe, was not entitled to exemption from taxation in the income years ended 30 June 2010 and 30 June 2011, as he was not a person who held an office in an international organisation within the meaning of s 6(1)(d)(i) of the *International Organisations (Privileges and Immunities) Act 1963* (Cth) ("the IOPI Act"), and that the Commissioner of Taxation ("the Commissioner") was not bound to exempt Mr Jayasinghe from taxation by reason of s 357-60(1) of Sched 1 to the *Taxation Administration Act 1953* (Cth) and Taxation Determination TD 92/153.

Mr Jayasinghe was a qualified civil engineer. During the relevant income years, he was engaged by the United Nations Office for Project Services ("UNOPS"), an operational arm of the United Nations ("the UN"), as a "project manager" to build a 190 kilometre gravel road in Sudan. Mr Jayasinghe was engaged under an "Individual Contractor Agreement" to perform "specialist services" in recognition of his "skills and expertise". Under that agreement, he had the legal status of an independent contractor of UNOPS, had no authority or other right to enter into any legal or financial commitments or incur any obligations on behalf of UNOPS, was responsible for paying any tax levied by the Australian Government on his UNOPS earnings, and did not have the status of an official of the UN for the purposes of the Convention on the Privileges and Immunities of the United Nations [1949] ATS 3 ("the 1946 UN Convention"). From at least 1 May 2010, he was considered an expert on mission for the UN within the terms of s 22 in Art VI of the 1946 UN Convention.

The Commissioner disallowed an objection lodged by Mr Jayasinghe to notices of amended assessment issued to him for his earnings from UNOPS. The Administrative Appeals Tribunal set aside the Commissioner's decision, concluding that the substance of the relationship between Mr Jayasinghe and UNOPS, and the obligations created and implemented in carrying out the project, were such that he held an office within the meaning of s 6(1)(d)(i) of the IOPI Act, and that he was an employee and entitled to the benefit of TD 92/153. A majority of the Full Court of the Federal Court dismissed an appeal by the Commissioner.

Allowing the Commissioner's appeal, the plurality held that the phrase "a person who holds an office in an international organisation" in s 6(1)(d)(i) directed attention to the structure of the organisation and the person's place within it and was concerned with the incidents of the relationship between a person and an international organisation; which incidents depended on the substance of the terms upon which a person was engaged. The incidents of the relationship between Mr Jayasinghe and the UN were such that he did not "hold an office" within the meaning of s 6(1)(d)(i). Further, as Mr Jayasinghe was engaged by UNOPS as an expert, the Court unanimously held that he fell outside the scope of the phrase "person who holds an office" and that the Commissioner was not bound by TD 92/153 to exempt him from taxation.

- *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.*