



# HIGH COURT OF AUSTRALIA

8 December 2021

## DEPUTY COMMISSIONER OF TAXATION v CHANGRAN HUANG [2021] HCA 43

Today the High Court allowed an appeal from a decision of the Full Court of the Federal Court of Australia. The appeal concerned the Federal Court's power to make an order restraining a person from disposing of, dealing with or diminishing the value of assets, including assets located in or outside Australia (a "Worldwide Freezing Order") conferred by r 7.32 of the *Federal Court Rules 2011* (Cth) ("the Rules"). Rule 7.32(1) states that the purpose of the order must be "preventing the frustration or inhibition of the Court's process" and the order must serve that purpose "by seeking to meet a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied".

The respondent, Mr Huang, was a tax resident of Australia for a number of years. In December 2018, he left Australia for the People's Republic of China ("the PRC") while the Australian Taxation Office was conducting an audit into his income tax affairs. Subsequently, the Commissioner of Taxation issued to Mr Huang assessments for tax liabilities and a shortfall penalty totalling almost \$141 million. On application by the Deputy Commissioner of Taxation the primary judge made a Worldwide Freezing Order against Mr Huang until further order. Mr Huang sought leave to appeal against the freezing order to the extent it applied to his assets located outside Australia. The Full Court granted leave and set aside the Worldwide Freezing Order on the basis that there was presently no realistic possibility of enforcement of any judgment obtained by the Deputy Commissioner against Mr Huang's assets in the PRC or Hong Kong.

The High Court by majority held that the power in r 7.32 of the Rules is not constrained by a precondition that it may only be exercised if there is proof of a realistic possibility of enforcement of a judgment debt against the person's assets in each foreign jurisdiction to which the proposed order relates. Provisions granting powers to a court are not to be read down by making implications or imposing limitations which are not found in the express words. The power conferred by r 7.32 is broad and flexible. It is the court's authority to make orders against a person who is subject to the court's jurisdiction that is relevant to the power to make a freezing order, rather than the location of the person's assets. Requiring proof of a realistic possibility of enforcement in each jurisdiction would render the power to make a freezing order largely impotent to protect the Federal Court's process from frustration by defendants who are able to secrete assets or move them almost instantaneously across international borders. Further, such a precondition is effectively inconsistent with the power to make a Worldwide Freezing Order as it would necessitate identification of the defendant's foreign assets as well as potential means of enforcement in a relevant foreign jurisdiction. However, the likely utility of a freezing order is undoubtedly relevant to the exercise of the court's discretion to grant a Worldwide Freezing Order.

- *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.*