



## Supreme Court of New Zealand

19 December 2008

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

***Glenharrow Holdings Ltd v Commissioner of Inland Revenue***  
**(SC 59/2007 [2008] NZSC 116)**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

The Supreme Court has unanimously dismissed an appeal by Glenharrow Holdings Ltd in its claim against the Commissioner of Inland Revenue seeking a GST tax refund of the tax fraction (one-ninth) of an amount of \$45m which was the purchase price in 1997 of a licence to mine serpentinite and bowenite in Westland. Under the arrangements between the vendor of the licence, Glenharrow and its controlling shareholder a deposit of \$80,000 was paid and the balance of the price was discharged and an equivalent amount advanced back to Glenharrow by an exchange of cheques when the licence was transferred to Glenharrow, which was a shell company with no other assets. Only a relatively small amount of stone was extracted before the licence expired three years later and only \$210,000 of the advance was ever repaid.

The High Court largely disallowed Glenharrow's claim, ordering the Commissioner of Inland Revenue to credit Glenharrow with a GST refund of the tax fraction of the Court's valuation of the licence (\$9.75m). The Court of Appeal dismissed Glenharrow's appeal and, allowing a cross-appeal by the

Commissioner, reduced the tax refund to the tax fraction of the payments actually made by Glenharrow.

The Supreme Court has confirmed that ruling, agreeing that the Commissioner was entitled to invoke s 76 of the GST Act 1985 and to treat the arrangement as a tax avoidance. The Court has found that the arrangement entered into to defeat the intent and application of the Act: the price was not paid in economic terms, even though as between the parties a debt was discharged. The structure adopted by the parties achieved no economic effect and nothing significant in commercial terms.

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