



## Supreme Court of New Zealand

23 July 2010

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

**GOVIND PRASAD SAHA v COMMISSIONER OF INLAND REVENUE  
(SC 24/2009) [2010] NZSC 89**

### **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 Judicial Decisions of Public Interest [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz)**

Dr Saha was a New Zealand partner in the consultancy business of Ernst & Young. When that business was sold to a French company, Cap Gemini SA, he was allocated a number of shares in Cap Gemini SA. It was however a term of the allocation that, if Dr Saha left the employment of Cap Gemini SA within five years, he would forfeit the right to some of the shares.

After about a year, a dispute arose between Dr Saha and Cap Gemini SA. That dispute was resolved on terms which included an agreement that Dr Saha would forfeit only 50 per cent of the shares which would otherwise have been forfeited.

The shares were subject to the Foreign Investment Fund (“FIF”) taxation regime. Dr Saha claimed, under the rules of that regime, a deduction for the value of the 50 per cent of the shares which were forfeited. The

Commissioner of Inland Revenue disallowed that deduction. Dr Saha appealed to the High Court and then the Court of Appeal. Both Courts upheld the decision of the Commissioner.

Dr Saha then appealed to the Supreme Court, which has dismissed his appeal. The Court considered that, if all the shares had been forfeited, Dr Saha could have claimed a deduction for their value. The FIF rules provided however that the value of any gain which was “derived in kind and not in money” was to be taken into account. By retaining the 50 per cent of the shares which would otherwise have been forfeited, Dr Saha derived a gain “in kind” which offset the loss that he incurred through the forfeiture of the other shares. He was therefore not entitled to a deduction.

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