Supreme Court of New Zealand
Te Kōti Mana Nui

27 July 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

TRUSTPOWER LIMITED v COMMISSIONER OF INLAND REVENUE

(SC 74/2015) [2016] NZSC 91

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

Trustpower derives its income from retail sales of electricity. It generates about half of the electricity it sells and buys the rest from other generators. During the 2006, 2007 and 2008 tax years, it incurred costs totalling approximately $17.7m applying for and obtaining resource consents under the Resource Management Act 1991 in relation to four proposed electricity generation projects. In issue is whether the expenditure incurred in obtaining the resource consents for the four projects is on revenue account and therefore deductible, as the High Court held or, instead, is on capital account and therefore not deductible, as the Court of Appeal concluded. This turns on the application of s DA 2(1) of the Income Tax Act 2004 – the capital limitation – to the expenditure in question. To the extent to which expenditure is capital in nature, s DA 2 excludes deductibility.

Trustpower argued that expenditure in relation to a capital project is on revenue account and therefore deductible up to the point at which the taxpayer commits to completion of the project. This is referred to in the judgment as "the commitment approach". Trustpower argued that such commitments in relation to the four generation projects had not been made at the time the expenditure was incurred. On this basis the expenditure was on revenue account and therefore deductible.

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The Commissioner accepted the commitment approach but argued that commitment should be assessed in relation to the resource consents for the generation projects on the basis that the consents were identifiable capital assets. Thus the dates for commitment chosen by the Commissioner were the dates at which she contended that Trustpower committed to applying for the resource consents.

In the High Court, Andrews J addressed the case on the basis of the positions of the parties as just described and found in favour of Trustpower because she concluded that the resource consents were not identifiable capital assets. The Commissioner appealed to the Court of Appeal. That Court did not see the commitment approach as controlling and allowed the appeal.

The Supreme Court has unanimously dismissed Trustpower's further appeal.

The commitment approach was rejected. The Court held that expenditure on a capital project is generally on capital account. This is consistent with the language and scheme of the Income Tax Act and the absence of authority supporting the commitment approach. Policy arguments also undermine the commitment approach because its adoption would lead to differential tax treatment for similarly placed taxpayers, unnecessary indeterminacy, undue subjectivity and practical problems.

The Court, however, recognised that expenditure associated with early stage feasibility assessments regarding capital assets may be revenue expenditure and therefore deductible. Such assessments may be appropriately categorised as a normal incident of business. Expenditure which is not directed towards a specific project or which is so preliminary as not to be directed towards the advancement of such a project is likely to be on revenue account.

The expenditure by Trustpower was on capital account as it was specifically referable to, and associated with tangible progress in respect of, particular capital projects and therefore the expenditure was not deductible because of the capital limitation, despite Trustpower, at the time of the expenditure, not being committed to completion of the projects.

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