

2 December 2015

MACOUN v COMMISSIONER OF TAXATION

[2015] HCA 44

Today the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia. The High Court held that a former officer of the International Bank for Reconstruction and Development ("the IBRD") was not entitled to an exemption from taxation in respect of monthly pension payments he had received.

Section 6(1)(d)(i) of the *International Organisations (Privileges and Immunities) Act* 1963 (Cth) ("the IOPI Act") and reg 8(1) of the Specialized Agencies (Privileges and Immunities) Regulations (Cth) ("the SAPI Regulations") confer upon a person who holds an office in an international organisation to which the IOPI Act applies an exemption from taxation on salaries and emoluments received from the organisation. The exemption is set out in Item 2 of Pt 1 of the Fourth Schedule to the IOPI Act. The IBRD is an international organisation to which the IOPI Act applies.

The appellant, Mr Macoun, a former sanitary engineer with the IBRD, received monthly pension payments from a Retirement Fund established under the IBRD's Staff Retirement Plan ("the SRP") in the 2009 and 2010 income years, when he no longer held an office in the IBRD. The respondent ("the Commissioner") included the monthly pension payments in Mr Macoun's assessable income for the 2009 and 2010 income years.

Mr Macoun sought review of the Commissioner's decision in the Administrative Appeals Tribunal ("the AAT"). The AAT set aside the decision and substituted the decision that the monthly pension payments did not form part of Mr Macoun's assessable income and were exempt from Australian income tax.

The Commissioner appealed to the Full Court of the Federal Court of Australia. The Full Court allowed the appeal, holding that reg 8(1) of the SAPI Regulations confined the privileges specified in Pt 1 of the Fourth Schedule to the IOPI Act to persons currently holding an office in an international organisation to which the IOPI Act applied. As Mr Macoun did not hold such an office in the IBRD in the 2009 and 2010 income years, the exemption from taxation was not available to him. By grant of special leave, Mr Macoun appealed to the High Court.

The High Court unanimously held that Mr Macoun was not entitled to an exemption from taxation for the relevant part of his monthly pension payments because he had ceased to hold an office in the IBRD when he received them, and because he received them from the Retirement Fund established under the SRP rather than from the IBRD. The High Court also held that Mr Macoun's monthly pension payments did not fall within the phrase "salaries and emoluments" in Item 2 of Pt 1 of the Fourth Schedule to the IOPI Act, and that Australia's international obligations did not require Australia to exempt the monthly pension payments 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.*