



HIGH COURT OF AUSTRALIA  
Manager, Public Information

26 August 2009

BRUTON HOLDINGS PTY LTD (IN LIQUIDATION)

v

COMMISSIONER OF TAXATION & ANOR

[2009] HCA 32

Today the High Court held that the Commissioner of Taxation could not recover part of a tax debt owing by a company in liquidation by requiring payment from the company's solicitors of monies held in trust for the company. The Commissioner had issued a notice to the solicitors under section 260-5 in Schedule 1 of the *Taxation Administration Act 1953* (Cth) requiring payment of money which had been paid into their trust account by the company Bruton Holdings Pty Ltd.

Bruton Holdings was incorporated on 27 May 1997, solely to act as trustee of the Bruton Educational Trust. The Commissioner of Taxation refused Bruton's application for endorsement as a tax exempt entity in April 2006, and Bruton commenced proceedings challenging the refusal. It retained a firm of solicitors, Piper Alderman, to act on its behalf and paid approximately \$470,000 into the Piper Alderman trust account in respect of the costs and disbursements of the litigation. On 28 February 2007 the Directors of the company appointed administrators.

The appointment of the administrators immediately terminated Bruton's trusteeship of the Bruton Educational Trust. No replacement trustee was appointed. On 26 March 2007 the Commissioner issued to "the Trustee for Bruton Educational Trust" a notice of assessment for \$7,715,873.73 in respect of its tax liability for the 2003/04 financial year. On 30 April 2007 the creditors of Bruton Holdings resolved to place the company into voluntary liquidation. The administrators of Bruton Holdings were appointed liquidators. The Commissioner lodged a formal proof of debt in the winding up for the amount of the assessment issued on 26 March 2007.

On 8 May 2007 the Commissioner issued a notice under section 260-5 of the *Taxation Administration Act* to Piper Alderman, requiring the firm to pay to the Commissioner the amount of \$447,420.20 held in its trust account to the credit of Bruton Holdings. Bruton Holdings sought declarations in the Federal Court that the notice issued under section 260-5 was void, arguing that section 500(1) of the *Corporations Act 2001* (Cth) invalidated it. Bruton Holdings was successful before the primary judge, but the Full Court of the Federal Court allowed the Commissioner's appeal. The High Court granted Bruton Holdings special leave to appeal.

The High Court held that the Commissioner could not use section 260-5 in relation to the debts of a company in liquidation. In the Court's view, section 260-45 of the *Taxation Administration*

Act provides a specific regime for the collection and recovery of tax liabilities of such companies by requiring liquidators to set aside from available assets of the company, an amount sufficient to pay the Commissioner the amount recoverable as an unsecured creditor in the liquidation. The provisions of section 500 of the Corporations Act, which would invalidate any attachment on the property of a company in liquidation, support the view that section 260-5 does not apply to the recovery of debts owing to companies in liquidation. Were that not the case section 260-5 would have been in conflict with section 500.

The High Court allowed Bruton Holdings' appeal and ordered that the Commissioner's appeal to the Full Court of the Federal Court be dismissed with costs.

- *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.*