HIGH COURT OF AUSTRALIA

3 November 2021

CATHERINE VICTORIA ADDY v COMMISSIONER OF TAXATION
[2021] HCA 34

Today the High Court unanimously allowed an appeal from a judgment of the Full Court of the Federal Court of Australia. The principal question for determination was whether Pt III of Sch 7 to the *Income Tax Rates Act 1986* (Cth) ("the *Rates Act*") contravened Art 25(1) of the Convention between Australia and the United Kingdom for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains ("the United Kingdom convention") by imposing a more burdensome taxation requirement on a national of the United Kingdom than that imposed on an Australian national in the same circumstances.

Article 25(1) of the United Kingdom convention relevantly provides that nationals of the United Kingdom shall not be subjected in Australia to "other or more burdensome" taxation than is imposed on Australian nationals "in the same circumstances, in particular with respect to residence". From 1 January 2017, Pt III of Sch 7 to the *Rates Act* applied a new tax rate to people holding a Working Holiday (Temporary) (Class TZ) (Subclass 417) visa (a "working holiday visa"). The new tax rate was a flat rate of tax of 15 per cent to the first $37,000 of an individual's "working holiday taxable income", a maximum tax liability of $5,550. Under Pt I of Sch 7 to the *Rates Act*, the tax burden for an Australian national deriving taxable income from the same source during the same period was less: an Australian national was entitled to a tax-free threshold for the first $18,200 and was then taxed at 19 per cent up to $37,000, a maximum tax liability of $3,572.

The appellant, Ms Addy, is a national of the United Kingdom who, between August 2015 and May 2017, lived and worked in Australia while holding a working holiday visa. On appeal to the High Court, there was no dispute that Ms Addy was an Australian resident for tax purposes during the 2017 income year. The respondent, the Commissioner of Taxation, issued Ms Addy with an amended notice of assessment for that income year which applied Pt III of Sch 7 to Ms Addy's assessable income after 1 January 2017.

The High Court unanimously held that Art 25(1) of the United Kingdom convention requires a comparison between a national of the United Kingdom and an Australian national who is, otherwise than with respect to nationality, "in the same circumstances, in particular with respect to residence". The "same circumstances" that must be considered under Art 25(1) cannot include being or not being the holder of a working holiday visa, because that status depends on nationality. Ms Addy was an Australian resident for tax purposes and was taxed at rates applied under Pt III of Sch 7 to the *Rates Act*. An Australian national deriving taxable income from the same source during the same period would have been taxed at a lower rate under Pt I of Sch 7. The more burdensome taxation was imposed on Ms Addy owing to her nationality and, for that reason, contravened Art 25(1) of the United Kingdom convention.

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.

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