

Court Favours Australian Tax Authority in First Case Involving Diverted Profits Tax

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The Australian Taxation Office (ATO) issued a [media release](#) on 1 December 2023 to inform that the Federal Court had decided in the ATO's favour in the first legal case to consider the diverted profits tax (DPT). The Court delivered an oral judgment on 30 November 2023 in *PepsiCo, Inc. v. The Commissioner of Taxation*, confirming that the taxpayer is liable for royalty withholding tax (RWT) and, in the alternative, the DPT should apply.

The DPT aims to prevent the diversion of profits offshore through contrived arrangements and imposes a 40% penalty rate of tax to be paid upfront.

The media release does not provide further details of the case but notes that the ATO has been targeting for some time arrangements where RWT is not paid because payments were mischaracterized, particularly payments for the use of intangible assets, such as trademarks. The release of the full judgment is deferred to give the relevant parties time to apply for confidentiality orders to suppress commercially sensitive information in the judgment.