

Corporate Tax - South Africa

Taxpayer defeated in VAT case

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In *TCT Leisure (Pty) Ltd v CSARS* ([2010] ZASCA, March 12 2010), the court had to deal with the question of whether the supply of preference shares together with certain occupation rights was an exempt supply in terms of the Value Added Tax (VAT) Act.

The taxpayer sold preference shares and points rights which were contractual rights of occupation (in relation to holiday accommodation) exercisable against a trust that owned the property. It argued that the sale of the shares and points rights constituted the supply of a financial service in the form of 'equity securities' and was consequently exempt in terms of Section 12(a) of the VAT Act.

The tax commissioner had issued a revised assessment levying VAT on the basis that the taxpayer was selling a timeshare interest, and accordingly that those interests were 'goods' as defined in the VAT Act and were thus subject to VAT at the standard rate of 14%.

The court said that in order to succeed, the taxpayer would have had to show that the points rights formed part of the bundle of incorporeal rights comprising the preference shares. The source of these rights could be found only in the articles and memorandum of the preference share issuer. This was not the case.

The commercial practice was that the points rights were sold only together with shares; however, the court said that this did not result in the merger of the rights attaching to each. Shareholders were not, in their capacity as shareholders, entitled to exercise the rights of points holders, while points holders could not exercise the rights of shareholders.

In determining which portion of the purchase price paid was attributable to the taxable portion and which to the exempt portion, the court referred to Section 10(22) of the act. This provides that where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

The taxpayer conceded.

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