



Tax Alert



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The Supreme Court of Appeal has overturned an earlier Tax Court decision

The Supreme Court of Appeal has overturned an earlier Tax Court decision to allow a Franchisee who was obliged to incur refurbishment costs under a Franchise Agreement to claim a section 24C allowance in respect of those costs against income earned from sales to customers

The Supreme Court of Appeal (“SCA”) in the matter of Commissioner for SARS v Big G Restaurants (Pty) Ltd has overturned the Tax Court decision reported as B v Commissioner for SARS (Pty) Ltd. The taxpayer in the matter was obliged under a Franchise Agreement to *inter alia* pay a Franchise Fee to the Franchisor and to upgrade and refurbish its restaurants at regular intervals determined by the Franchisor. The taxpayer identified the refurbishment obligations as future expenditure to be incurred in the performance of its obligations under the Franchise Agreement. It sought to claim a section 24C allowance against income earned from its sales to customers. The basis for the taxpayer’s arguments was that whilst its income may come directly from ad-hoc sales (and hence contracts) with customers, it was obliged to conclude those sales under the Franchise Agreement and that by necessary inference the income was earned “in terms” of the Franchise Agreement.

The SCA noted that the phrase “in terms of”, as it appears elsewhere in legislation, has not been interpreted in a consistent manner by the courts. Some courts have given a narrow interpretation and held that the phrase implies a direct causal link whereas others have seen it as indicating a loose and indirect relationship. However, in the context of section 24C, the SCA found that the phrase “in terms of” had a narrow meaning. The direct cause of the income was the contracts with customers, which was a separate contract from the Franchise Agreement containing the obligation to incur refurbishment expenditure. The income was accordingly not earned in terms of the contract under which the taxpayer was obliged to incur the future expenditure.

The court therefore found against the taxpayer and overturned the earlier tax court decision.

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