



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

CASE *BP Southern Africa (Pty) Ltd v The Commissioner for South African Revenue Services*
(Case No 60 / 06)

Media Statement

Today the Supreme Court of Appeal ('SCA') held that royalty payments are tax deductible in terms of s 11(a) of the Income Tax Act. It accordingly upheld an appeal by BP Southern Africa (Pty) Ltd ('BPSA') against a judgment of the Cape Town Income Tax Special Court.

During 1997 BPSA concluded a written trade mark licence agreement with its parent company BP plc in terms whereof it was granted authorisation to use and display the licensed marks and licensed marketing *indicia* of the latter against payment of royalties. For the tax years 1997, 1998 and 1999 the royalty fee payments were respectively R40 190 000, R45 150 000 and R42 519 000. BPSA subsequently claimed those payments as deductions in terms of section 11(a) of the Income Tax Act 58 of 1962 in the determination of its taxable income. The Commissioner of the South African Revenue Services ('SARS') disallowed those deductions. BPSA's objection to the disallowance was overruled by SARS and its subsequent appeal to the Cape Town Income Tax Special Court was dismissed. The SCA reasoned that the annual royalty payment procured for BPSA the use - not ownership - of the intellectual property of its parent company. The recurrent nature of the payment which neither created nor preserved any asset in the hands of BPSA was to all intents and purposes indistinguishable from recurrent rent paid for the use of another's property. The SCA concluded that the expenditure in issue was so closely linked to the appellant's income-earning operations during the tax years in question as to constitute revenue expenditure in respect of each of those tax years. The SCA accordingly declared those amounts to be deductible under section 11(a) of the Act and directed that SARS alter the assessments for each of those tax years accordingly.

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