

# SUPREME COURT OF APPEAL OF SOUTH AFRICA

## **MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 28 March 2018

**STATUS** Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

### ***The Commissioner of SARS v The Executors of Estate Late Sidney Ellerin (142/2017) [2018] ZASCA 39 (28 March 2018)***

Today the Supreme Court of Appeal (SCA) upheld an appeal against an order of the Gauteng Tax Court, Johannesburg. This matter concerns the valuation of preference shares for the purposes of determining a capital gain in terms of paragraph 40 read with paragraph 31(3)(a)(i) of the Eighth Schedule to the Income Tax Act 58 of 1962 (the Act).

The only issue before the Tax Court was whether the rights that attached to the preference shares and which entitled the holder thereof to convert them should be taken into account in the determination of the market value. After interpreting the relevant provisions of the Memorandum and Articles of Association, the Tax Court concluded that, on the date of his death, the deceased was not entitled to convert the preference shares to ordinary shares, in that, at least 75 per cent of the holders of each class of shares had to agree to the conversion.

The issues on appeal before the SCA were whether: (1) the holder of the deceased's preference shares could convert these shares into ordinary shares without an amendment to Article 34 of the Articles of Association, which, when read with special condition 5.8, required the written approval of 75 per cent of the holders of each class of shares in the issued share capital of the company - (2) Whether, in terms of Article 4.2, conversion of the deceased preference shares to ordinary shares could take place without the approval of 75 per cent of the holders of the ordinary shares.

The respondent contended that the value of the preference shares must be determined on the basis that the holder was precluded from converting these shares to ordinary shares without obtaining the prior written approval of at

least 75 per cent of the ordinary shareholders and at least 75 per cent of the holders of each class of shares in EET.

The SCA held that any interpretation regarding a company's articles must be located within the context of the nature of the Articles of Association which confer rights or impose obligations on person who are members. It is clear that the deceased, by virtue of holding an overwhelming majority of the votes, could have converted the preference shares to ordinary shares. In the result the appeal was upheld with costs, including the costs of two counsel.