



## 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** 22 March 2019

**STATUS** Immediate

***Benhaus Mining v CSARS (165/2018) [2019] ZASCA 17 (22 March 2019)***

***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 Supreme Court of Appeal today upheld an appeal against a decision of the Tax Court, Johannesburg, that had held that contract miners, who work open cast mines for a fee, do not conduct mining operations and are not thus entitled to the benefit of the special dispensation afforded by the Income Tax Act 58 of 1968 to mining companies. The Act allows for the recovery of capital expenditure in the tax year in which the expenditure is incurred. In other industries capital expenditure can be deducted only over a number of years, depending on the anticipated life of the asset acquired.

The Tax Court held that extracting mineral bearing ore from the ground did not amount to mining within the meaning of the Act. However, the SCA held that in a line of cases decided by this court the process of extracting ore from the soil (as opposed to the processes of refining the mineral once extracted) did amount to mining operations and that the appellant was entitled to deduct its capital expenditure in the tax year in which the expenditure was incurred. The SCA thus referred the additional assessments made by the Commissioner for the

South African Revenue Service, for the tax years 2005 to 2009, back to the Commissioner for reassessment.

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