THE SUPREME COURT OF APPEAL 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.

XO Africa Safaris v CSARS (395/15) [2016] ZASCA 160 (3 October 2016)

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) dismissed an appeal by XO Africa Safaris CC (XO) against an order of the Tax Court, Johannesburg, and affirmed the interpretation of the Value Added Tax Act 89 of 1991 contended for by the Commissioner of the South African Revenue Service (SARS).

The issue before the SCA was whether the rate of value added tax (VAT) applicable to the operations of XO, a tour operator, was the standard rate of 14% or the zero rate applicable in terms of s 11(2)*(l)*.

XO was a South African company which arranged tour packages in South Africa for foreign tour operators, which would then on-sell those packages to their own customers. Neither the foreign tour operators nor their customers were South African residents.

XO argued that the payments it received from the foreign tour operators should be zero-rated in terms of s 11(2)*(l)* on the basis that they were payments for booking services supplied to foreign tour operators, and therefore for services supplied to persons who were not resident in South Africa and not present at the time that the services were rendered.

The SCA rejected this argument. It held that XO had not only provided a booking service to foreign tour operators. In the various contracts XO had entered into with the foreign tour operators, it had undertaken to provide the local services themselves. It had ensured that the services were properly rendered by the local service providers. And, it treated the payments it had made to the local service providers as expenses and deducted input vat from those payments, while treating the total invoiced

amounts to the foreign tour operators as sales. This was not consistent with its version that it had only provided a booking service to the foreign tour operators. In addition, while the foreign tour operator may have been the party contracting with XO, the services were ultimately for the benefit of the foreign tour operator's customers, and the services were rendered to those customers while they were present in South Africa.

Accordingly, the SCA held that s 11(2)*(l)* did not apply to XO's operations, and dismissed the appeal.

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