



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 9 November 2018

STATUS Immediate

Sasol Oil v CSARS (923/2017) [2018] ZASCA 153 (9 November 2018)

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, by a majority of the court, today upheld an appeal against the decision of the Tax Court (Johannesburg), in which it was held that contracts between companies in the Sasol Group of companies, for the supply of crude oil by a company in the Isle of Man to a group company in London, and the on sale of the same crude oil to Sasol Oil (Pty) Ltd in South Africa, were simulated transactions. As such, the Tax Court found that the transactions should be disregarded by the Commissioner for the South African Revenue Service, and that the Commissioner was entitled to issue additional assessments for the 2005, 2006 and 2007 tax years.

On appeal, the SCA considered all the circumstances leading to the conclusion of the impugned contracts, the terms of the contracts, the evidence of officials of Sasol Oil, the time when the contracts were concluded (2001), and the period when Sasol Oil may have become liable for the income tax that the Commissioner asserted was payable by Sasol Oil (2005 to 2007). It held that the uncontroverted evidence of the witnesses for Sasol Oil was that in 2001, when the contracts were first concluded, the witnesses had proposed them not

in order to avoid tax (residence based tax introduced in mid-2001) but because they had a commercial justification. In any event, the liability for residence based tax would have arisen only when one party to the supply agreement, resident in the Isle of Man, became a foreign controlled company in so far as Sasol Oil was concerned. That had occurred only in 2004. A finding of simulation would have entailed a finding that many individuals and corporate entities, as well as several firms of auditors, were party to a fraud over a lengthy period, for which there was no evidence at all.

The SCA thus found that the Commissioner was not entitled to issue the additional assessments and that Sasol Oil's appeal to the Tax Court against the assessments should have been upheld.
