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Attempt to Deduct Input Tax From Output Tax on Entertainment Expenses Fail

By **Pierre van der Merwe** (Partner),
Rogan Kilfoil (Associate) and
Suzan Ndobe (Candidate Attorney)

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Aveng Mining Shafts and Underground v Commissioner for the South African Revenue Services (1192/2023) [2025] ZASCA 20

INTRODUCTION

On 17 March 2025, the Supreme Court of Appeal ("**SCA**") hearing the matter on appeal from the Tax Court of South Africa, Gauteng ("**the Tax Court**") handed down judgment wherein it found that Aveng Mining Shafts and Underground (Pty)Ltd ("**the Appellant**") was not entitled to claim certain input tax from its output tax.

The Tax Court's decision was based on the Value-Added Tax Act 89 of 1991 ("**the Act**"), in determining deductibility of entertainment expenses from output tax in terms of section 17(2)(a).

BACKGROUND FACTS OF THE CASE

The Appellant is a vendor as defined by section 7(1) of the Act, and its enterprise entails shaft sinking and mining construction activities for various mining clients. During various projects, employees were stationed at mine sites and provided with accommodation and food, categorised as "entertainment expenses". The Appellant sought to deduct input tax in the amount of R17,495,071.81 relating to "entertainment expenses" for the period of 06/2012 to 08/2016.

However, the Commissioner of South African Revenue Service ("**Respondent**") disallowed the deduction of the entertainment expenses by the Appellant, leading to the appeal before the SCA.

OUTPUT TAX VS INPUT TAX IN A NUTSHELL

Briefly, section 7(1) of the Act states that output tax is levied on the supply of goods and services by the vendor, simply meaning that it is VAT charged by a business/vendor on the sale of goods and services.

Input tax, on the other hand, is the VAT charged and payable by supplier on the supply of goods and services made by it to the vendor, this simply means that input tax is VAT paid by a business/vendor on its purchases. Input tax is deductible against output tax only to the extent permitted by section 17.

SECTION 17 VALUE ADDED TAX

Section 17(2)(a) of the Act deals with the deductibility of input tax from output tax. Essentially, this section states that a vendor shall not be entitled to deduct from the sum of amounts of output tax and refunds, any amount of input tax in respect of goods and services acquired for entertainment purposes. There are only narrow exceptions to the deductibility of input tax.

THE SCA's FINDINGS

The SCA carefully considered several factors before concluding that the Appellant was not entitled to deduct its input tax from output tax as the provisions applied to goods and services acquired by vendor for purpose of making taxable supplies of entertainment regularly, which was not the case with the Appellant.

The proviso to s 17(2)(a)(i) requires that, to fall within exceptions (aa) or (bb), the input tax must be "*in respect of goods or services acquired for making taxable supplies of entertainment in the ordinary course of an enterprise*". The Appellant's enterprise is shaft-sinking and mining construction, not "entertainment", so neither exception (aa) nor (bb) applies.

Even if the proviso could apply, the Appellant did not charge employees separately for meals or accommodation. Section 17(2)(a)(i)(bb) therefore cannot assist.

The employees were stationed at the project sites as their regular place of work and thus were not "away from" their usual place of work under s 17(2)(a)(ii).

Therefore, the input tax did not meet the requirement of being acquired for making taxable supplies of entertainment in the ordinary course of the Appellant's enterprise.

PRECAUTIONARY MEASURES FOR COMPANIES

The key principle of section 17(2)(a) of the Act is that vendors are not allowed to deduct any input tax charged on taxable supply of goods and services obtained for entertainment purposes, unless they meet narrow exceptions permitted by the Act.

Companies must continuously attempt to protect themselves from tax implications by:

1. Seeking professional tax advice to prevent tax disputes with tax collection authorities;
2. maintaining financial records in line with its core enterprise dealings;
3. conducting contract reviews to avoid unintended tax implications;
4. undertaking continuous tax planning and structuring and considering allowed tax deductions and inclusions of certain goods and services; and
5. fostering a good relationship with tax collection authorities to allow for proper identification of potential disputes before the matter escalates.

CONCLUSION

In conclusion, the decision by the SCA, in dismissing the Appellant's appeal, was founded on the provisions of section 17(2)(a) of the Act having not been satisfied, in that the making of taxable supplies was not in the Appellant's enterprise, leading to the Appellant not being entitled to make the deductions as contemplated.

This case serves to delineate the meaning of "making taxable supplies" and confirms that the making of taxable supplies must be in the course of the vendor's enterprise for the relevant deductions to be allowed under the Act. The case clarifies that "making taxable supplies of entertainment" must be intrinsic to a vendor's enterprise, and that mere provisioning of meals and accommodation to employees does not qualify. Vendors should rigorously apply s 17(2)(a)'s exceptions to avoid disallowed input-VAT claims.

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Pierre van der Merwe
(Partner)

Rogan Kilfoil
(Associate)

Suzan Ndobe
(Candidate Attorney)