



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED

***City Power (SOC) Limited v The Commissioner for the South African Revenue Service  
(Case no 1147/2019) [2020] ZASCA 150***

**From:** The Registrar, Supreme Court of Appeal

**Date:** 20 November 2020

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of these cases and does not form part of the judgments of the Supreme Court of Appeal***

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Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against a decision of the Tax Court of South Africa, Gauteng (Victor J), concerning exemptions under the Income Tax Act 58 of 1962. The appeal was dismissed with costs.

The appellant, City Power Soc Limited (City Power), is a state-owned company that is wholly owned by the City of Johannesburg (the City). In 2014 it was issued with income tax assessments in respect of the 2010-2012 years of assessment by the respondent, the Commissioner for the South African Revenue Service (the Commissioner). City Power took the view that, as a municipal entity, performing functions that would otherwise have been performed by the City of Johannesburg, its receipts and accruals stood to be exempted from normal tax under the Income Tax Act. It accordingly objected to the assessment and, upon the objection being disallowed, appealed to the Tax Court. This appeal was dismissed.

In a further appeal to the SCA, the issue for determination was thus whether City Power's receipts and accruals are exempt from normal tax under the Income Tax Act.

The SCA held that City Power did not qualify as a ‘municipality’ as defined in the Income Tax Act. Nevertheless, City Power argued that by discharging constitutional functions which the City was obliged to perform, its receipts and accruals fell to be treated on the same footing as those of a municipality. The SCA rejected this line of reasoning on the basis that City Power was a private company, to be run along commercial lines, with the object of generating profit through the distribution of electricity. The receipts and accruals were thus those of City Power.

The SCA further held that City Power does not fall within ‘local sphere of government’. The fact that City Power performed a public function did not mean that it fell within the local sphere of government. The receipts and accruals of City Power were thus not those of ‘the government of the Republic’ in any of the spheres (ie the national, provincial or local spheres), nor at any stage the ‘receipts and accruals of municipalities’. The SCA accordingly held that the exemptions do not apply.

In the result, the appeal was dismissed with costs, including the costs of two counsel.

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