



**THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA**

**MEDIA SUMMARY – JUDGMENT DELIVERED  
IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 20 December 2017  
Status: Immediate

*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.*

***VOLKSWAGEN SOUTH AFRICA (PTY) LTD***

***V***

***THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE  
SERVICE***

The appellant, a manufacturer of light motor vehicles, became entitled to receive a productive asset allowance (PAA) in terms of a government scheme designed to encourage motor manufacturers to rationalise the number of models they were producing in order to remain internationally competitive. The form in which the PAA benefit was provided was by way of the issue of certificates as provided in a rebate item contained in a schedule to the Customs and Excise Act 91 of 1964. This provided for a rebate on customs duty on certain categories of

completely build-up imported light motor vehicles. The amount of this benefit was calculated as a percentage of the value of the manufacturer's capital expenditure on items such as buildings erected or purchased, new plant, machinery and tooling, acquired in order to manufacture a rationalised range of light motor vehicles.

Only those manufacturers who committed to the process of rationalisation and made the necessary investments in fixed capital to achieve that end were entitled to receive benefits under this scheme. Without doing so, they would not receive PAA certificates which reflect an amount calculated in regard to the capital investment they had made in pursuit of the scheme. The PAA certificates, in turn, could be used to reduce the amount of import duty a manufacturer became obliged to pay on importing certain vehicles.

The appellant duly applied and was admitted to the PAA scheme. In its income tax returns for the years of assessment 2008-2010 it reflected certain PAA certificates it had received as being accruals of a capital nature. The amounts involved were substantial. The Commissioner for the South African Revenue Service refused to accept that these amounts were of a capital nature, and assessed the appellant to tax on the basis that they were income. The appellant's objection to such assessment was overruled. This led to an appeal in the Tax Court which concluded that the PAA certificates should indeed be treated, as the Commissioner contended, as income or revenue.

The appellant then appealed to the SCA against the Tax Court's decision. The appeal was today upheld. The court concluded that the PAA certificates had been made due to contribute towards the appellant's capital expenditure and

there was no reason to view it as a non-capital nature. The appeal therefore succeeded and the order of the Tax Court was set aside and replaced with an order that the appellant's income tax for the applicable tax years is to be assessed on the basis that the PAA certificates for those years are receipts of a capital nature.