

"Today's Accomplishments Were Yesterday's Impossibilities." – Robert H. Schuller

April 2018

REBATES: CAPITAL OR REVENUE IN NATURE?

Volkswagen South Africa (Pty) Ltd v Commissioner for the South African Revenue Service [2018] 1 All SA 716 (SCA)

Volkswagen, South Africa (the "**Appellant**") one of the largest motor vehicle manufactures in South Africa, derives its income from the sale of manufactured and imported motor vehicles. In 1995, the South African Government implemented the motor industry development program (the "**MIDP**") with the objective of growing the automotive industry and for the industry to become internationally competitive. The **MIDP** had shown to be successful and the government extended the **MIDP** with a further objective – to rationalise the models of vehicles being produced.

However, this would require capital expenditures for plant upgrades and technology enhancements. This led to the introduction of the Productive Asset Allowance (the "**PAA**") for vehicle manufactures that have invested a minimum value to productive assets for the assembly of light vehicles. The **PAA** was awarded in the form of a duty rebate certificate – equal to a maximum of 20% of a manufacturer's total capital investments. It was an investment incentive, and not a trading incentive. The **Appellant** reflected the rebates it had received as accruals of a capital nature in its income tax returns. The **Commissioner** refused to accept that the amounts were of a capital nature, and assessed the **Appellant** on the basis that they were income. The **Appellant** objected to the assessment, which was overruled, and led to an appeal in the Tax Court whose judgment was the subject of the appeal to the Supreme Court of Appeal (the "**SCA**"). The question to be answered by the **SCA** was whether the rebates were receipts or accruals of a capital nature or revenue in nature.

Law & Laughter

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The **Commissioner** argued that the rebates were not intended to support capital expenditure but merely to allow vehicle manufactures to reduce the cost of importing vehicles and thereby increased revenue. However, the **SCA** concluded that the rebates were paid to compensate manufacturers for a portion of their capital expenditure incurred for the rationalisation of motor vehicle models. The **SCA** concluded that the benefits derived from rebates amount to a benefit received by the **Appellant** in respect of its capital expenditure, and such rebates are clearly to be regarded as a receipt of a capital nature. It can be concluded that the reason or purpose of rebates being awarded must be established before one can determine whether the rebates will constitute a receipt of a capital nature or revenue in nature.



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