

THE NATURE OF YOUR TAXABLE SUPPLIES

CSARS v Respublica (Pty) Ltd. (1025/2007) 2018 ZASCA 109 (the "Respublica-Case")

To explain the ruling of the court, Respublica entered into a lease agreement with the Tshwane University of Technology (the "TUT"). A furnished premise with amenities was let to TUT for the sole purpose of providing accommodation to students. TUT in return, entered into sub-leases with students.

Respublica's performance in terms of the lease agreement constituted a taxable supply in terms of the VAT Act, unless one of the exceptions, deductions, exemptions or adjustments in terms of the VAT Act would find application. Respublica approached the court for a declaratory order to the effect that the supply to TUT constituted a "commercial accommodation" as provided for in the VAT Act. Commercial accommodation refers to a short-term stay together with domestic services, in other words "lodging". Should the supply be that of a commercial accommodation, Respublica would be entitled to charge VAT only on 60% of the total consideration received from TUT.

Respublica argued that the letting of accommodation to TUT, who in return sublets same to students, constitutes the letting of commercial accommodation in the hands of Respublica. However, the agreement between Respublica and TUT is for the supply of immovable property. The supply of commercial accommodation to the students is done in terms of a separate contractual relationship between TUT and the students.

The Supreme Court of Appeal concluded that the direct contractual relationship between a VAT vendor as supplier (Respublica) and the customer (TUT in this case), as recipient of the supplies or goods, dictate the nature of the taxable supply. The end use of the services or goods in terms of a second or further supply agreement cannot dictate the nature of a taxable supply. Therefore, the subsequent use or application of the supply has no bearing on the nature of the initial supply.

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