

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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.

Commissioner, South African Revenue Services v Clicks Retailers Ltd
[2019] ZASCA 187

The SCA today upheld an appeal against a decision of the Tax Court sitting in Cape Town that had upheld an appeal by Clicks Retailers Ltd against the refusal by the Commissioner to approve an allowance in terms of s 24C of the Income Tax Act 58 of 1962.

Clicks' claim arose from its loyalty programme known as the ClubCard. Customers could sign up as members of the loyalty programme in terms of a contract that provided that for every purchase exceeding R10 for which the customer presented a ClubCard at the till, the customer would receive 1 point for every R5 spent. For every 100 points accumulated in a quarter they would receive a R10 rewards voucher, which could be exchanged in part payment for subsequent purchases. The rewards vouchers could not be exchanged for cash and would lapse after one year.

Clicks contended that it received revenue from the sales generating the points and was obliged to use that revenue to finance its obligations to provide rewards vouchers. As the revenue was used to finance its future obligations under those sales contracts it contended that it was entitled to claim an allowance under s 24C of the Act.

The SCA held, in a unanimous judgment by Dlodlo JA, that while the revenue arose in terms of the sale contracts the allocation of points and the issue of rewards vouchers arose under the loyalty programme agreement. Accordingly the revenue and the expenditure did not arise under the same contract as required by s 24C and the Commissioner was correct to refuse the allowance.

In a concurring judgment by Wallis JA, with which the remaining members of the court agreed, the purpose of s 24C was explained and analysed. He held that the revenue from the initial sales was used to finance the acquisition of trading stock in the ordinary course of Clicks' business and not for the specific purpose of meeting any obligations to award points and issue rewards vouchers. The effect of such vouchers was no different from any other arrangement where Clicks offered customers a discount on purchases. He doubted whether the cost of doing so constituted expenditure for the purpose of s 24C, but reached no final conclusion on that point.

The appeal accordingly succeeded and the decision of the Tax Court was set aside and replaced by an order dismissing the taxpayer's appeal.