

# SUMMARY OF THE JUDGMENT

## ZERO-RATING THE SUPPLY OF LOW INCOME HOUSING: WHICH PROJECTS ARE EXCLUDED FROM THIS RATING?

### Commissioner for the South African Revenue Services v Amawele Joint Venture CC (908/2017) [2018] ZASCA 115 (19 September 2018)

*In September this year, the Supreme Court of Appeal handed down judgment in the matter of The Commissioner for the South African Revenue Services v Amawele Joint Venture CC (Amawele).*

*The Court was tasked with determining whether the three housing projects under the Emergency Assistance Programme (EAP) and the Rectification and Revitalisation Programme (RRP), undertaken by Amawele for the KwaZulu-Natal Provincial Department of Human Settlements (Department), were VAT zero-rated supplies. The supply of services pursuant to these contracts would be zero-rated by virtue of section 11(2)(c), read with section 8(23) of the VAT Act, which provide for zero-rating of the deeming provision of services to public authorities and municipalities funded by the Housing Subsidy Scheme as identified in section 3(5)(a) of the Housing Act 107 of 1997.*

*The Judgment can be viewed [here](#).*

### FACTS

Briefly the facts were as follows:

Amawele had undertaken three contracts for the Department of Housing - two for the revitalisation and rectification of houses built during the period from March 1994 to 2002, and the other for providing emergency relief in respect of housing damaged by a storm in Ennambithi. The work was undertaken in terms of two national housing programmes, the EAP and the RRP.

Amawele had initially accounted for VAT at the standard rate (then) of 14% on its services, but later sought a refund as it believed the payment was erroneous. It argued that it was not liable to charge, collect and pay VAT to SARS at the standard rate as the services it supplied to the Department qualified for zero-rating on a historic basis, from July 2008 to September 2010. In return, SARS conducted an audit which culminated in an additional assessment to Amawele in an amount of R38 million.

The Pretoria Tax Court concluded that certain of the construction services rendered to the Department were to be zero-rated for the purposes of VAT. The Gauteng Division of the High Court, Pretoria, dismissed an appeal against the decision of the Tax Court and the Commissioner appealed against this decision.

### HELD:

- Considering the history of sections 11(2)(c) and 8(23), the Supreme Court of Appeal considered the history of the Housing Subsidy Scheme. It concluded that when these sections were introduced neither the EAP nor the RRP were part of the Housing Subsidy Scheme, because they were not in existence at that time. When they were introduced in 2004 and 2005 they were constituted separately as national housing programmes, separate and distinct from the Housing Subsidy Scheme. In the circumstances the provision for zero-rating of supplies under the latter scheme was not applicable to the EAP and the RRP. Section 11(2)(s) read with section 8(23) of the VAT Act therefore did not apply to the projects undertaken by Amawele.

Contractors that rendered services before January 2017 should therefore still carefully evaluate whether their services were correctly zero-rated in terms of section 11(2)(s) read with section 8(23) of the VAT Act. An incorrect assessment can hit an unsuspecting contractor hard.

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