

## **SUPREME COURT OF APPEAL OF SOUTH AFRICA**

### **MEDIA STATEMENT – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 29 March 2005

Status: Immediate

### **COMMISSIONER FOR SOUTH AFRICAN REVENUE SERVICE v BRITISH AIRWAYS Plc**

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.

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The Supreme Court of Appeal today (29 March 2005) held that an international airline is not liable to pay value-added tax (VAT) on the money that it recovers from passengers to recompense it for the passenger service charge that it pays to the Airports Company.

The airline concerned, British Airways Plc, provides an international carrier service, which is 'zero-rated' for purposes of VAT, which means that British Airways is not liable to pay VAT on the fares that it charges to its passengers.

The Airports Company charges the airline a passenger service charge for each passenger on a departing aircraft, which the airline recovers from passengers as part of its composite fare.

The South African Revenue Service assessed British Airways for the payment of VAT on the passenger service charge that it recovered from its passengers, alleging that that charge was for the supply of airport services, which attracts VAT at the ordinary rate of 14%, and not for the supply of international carriage, which is 'zero-rated'.

The tax court set aside the SARS assessment and the SARS appealed to the SCA against the tax court's decision. The SCA held that British Airways did not supply airport services to passengers, but merely paid for the supply of those services to passengers by the Airports Company. That was a cost that it recovered from passengers as part of its fare for supplying international carriage, which was zero-rated, and was not a charge for the supply by British Airways of a separate service.

Accordingly the tax court correctly set aside the assessment and the appeal against the tax court's decision was dismissed by the SCA.