



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, 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.

***MTN International (Mauritius) Ltd v The Commissioner of South African
Revenue Services (275/2013) [2014] ZASCA 8 (14 March 2014)***

The Supreme Court of Appeal handed down judgment today in an appeal from the North Gauteng High Court, Pretoria. The issue before the court was whether a revised assessment raised by the respondent, the Commissioner for the South African Revenue Service (SARS), in terms of the Income Tax Act 58 of 1962 to assess the appellant, MTN International (Mauritius) Limited (MTN), to tax for the 2006 year of assessment, falls to be set aside.

MTN had claimed interest on loans it had incurred as expenditure, in terms of the Act, against its gross income for the year of assessment. On 31 March 2011, which was the last day before the original assessment by SARS was due to prescribe, SARS raised the revised assessment, disallowing the interest expenditure. The revised assessment resulted in an income tax liability by MTN of R73 476 101. When raising the revised assessment the relevant SARS official manually fixed the ‘due date’ as 30 March 2011, being one day prior to the day on which the assessment was actually raised.

MTN applied to the high court to have the revised assessment set aside, on the basis that the ‘manipulation of dates’ was irregular and unlawful. SARS, however, contended that the ‘backdating’ was of no consequence and thus did not affect the validity of the assessment.

The high court, per Thlapi J, held that the revised assessment did not fall to be set aside, but granted leave to MTN to appeal to this court.

This Court noted that it is not a requirement in terms of the Act that an assessment be dated. Consequently, the failure to specify a 'due date' did not have the effect of invalidating the assessment. Likewise, inadvertently fixing an incorrect date – for example, by way of a clerical error – does not affect the validity of the assessment. Accordingly, the fact that a 'due date' may have been incorrectly fixed was not a ground for the setting aside of the revised assessment.

In the result, the appeal was dismissed with costs.