Media Summary – Armgold/Harmony Freegold Joint Venture v CSARS (703/2011) [2012] ZASCA 152 (1 October 2012)

The Supreme Court of Appeal today delivered judgment in a dispute between Armgold/Harmony Freegold Joint Venture and SARS relating to the application of sections 36(C), 36(7E) and 36(7F) of the Income Tax Act 58 of 1962 and capital expenditure deductions for a mining company. It had been contended by the appellant that each of its mines should be regarded as a separate trade, resulting in each of its profitable mines being entitled to deduct the full cap of its capex calculated under s 36(7F) without any regard being had to the loss suffered by another of its mines. SARS had sought to apportion that loss between the appellant's profitable mines and to reduce their taxable incomes before capex, reducing the amount of the capex deduction of each profitable mine.

The Supreme Court of Appeal rejected the appellant's approach to the calculation of the capex deductions it was entitled to make. However, it also rejected the respondent's calculation in principle. It held that the effect of s 36(7E) was to set a maximum for the total amounts deductible as capex, but as the loss suffered on the one mine reduced the overall taxable income derived by the appellant from mining, and thereby reduced the general cap on allowable deductions, the individual caps allowable under s 36(7F) had to be reduced correspondingly.

The result of this is that SARS had arrived at the correct

figure of the appellant’s tax liability, albeit by the application of an incorrect principle. The appeal was therefore dismissed with costs.