**REPUBLIC OF SOUTH AFRICA**

**IN THE TAX COURT OF SOUTH AFRICA**
**(HELD AT CAPE TOWN)**

Case number: **VAT 22498**

| | |
|---|---|
| (1) | REPORTABLE: **YES** / ~~NO~~ |
| (2) | OF INTEREST TO OTHER JUDGES: **YES** / ~~NO~~ |
| (3) | REVISED. |
| **27 July 2026** | ________________ |
| DATE | SIGNATURE |

In the matter between:

**TAXPAYER A** **Appellant**

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** **Respondent**

**Coram:** **Justice J Cloete (President), Mr P Janse van Rensburg (Accountant Member) and Ms L-A Groener (Commercial Member)**

**Heard**: 11, 12 and 15 May 2026, supplementary notes received on 2 June2026

**Delivered**: 27 July 2026 (Delivered electronically)

---

# J U D G M E N T

---

## Cloete J:

### Introduction

[1] This appeal concerns the appropriate method of apportioning input tax incurred by the appellant under section 17(1) of the Value-Added Tax Act (VAT Act).[1] More particularly, it is an appeal against the VAT apportionment ruling issued by the respondent (SARS or the Commissioner) on 23 September 2021 (Ruling) in terms of which SARS, instead of approving the appellant's request made on 21 September 2020 in terms of section 17(1) read with section 41B of the VAT Act for a transaction count method of apportionment (TC method) for its entire business enterprise, approved a dual method, comprised of a varied standard turnover-based method (for convenience, varied STB method), save for a TC method in respect the appellant's information technology (IT) infrastructure.

[2] The appellant lodged its objection[2] to the Ruling on 29 October 2021. SARS disallowed the objection on 28 February 2022, which was followed by the lodging of the appellant's appeal against that disallowance on 25 March 2022. After the exchange of statements under rules 31 and 32,[3] the dispute came before Myburgh AJ (also sitting as a Tax Court) who dealt with two preliminary issues. On 16 January 2024, he made orders granting SARS's application to introduce a special plea challenging the Tax Court's jurisdiction but also dismissing that special plea.

[3] SARS appealed the order of Myburgh AJ to the Supreme Court of Appeal (SCA). On 15 May 2025, the SCA dismissed the appeal. I will return to certain of the SCA's findings since they are relevant to onus, which became an issue in closing argument before us.

[4] In support of their respective cases the parties relied on various documents and written communications, which were admitted into evidence by agreement. In addition, the appellant led the evidence of two witnesses and SARS called one witness. The appellant's first witness was Ms NN, a chartered accountant who joined the appellant in 2017 as its senior group tax manager, became the head of group tax in 2023, and is currently employed in this position as consultant. The appellant's second witness was Mr CC who is a tax practitioner and at the relevant time was employed by Company E. The appellant was one of Company E's clients. In essence, Mr CC had motivated the request for the method change which SARS did not approve. Mr CC was not called in the capacity of an expert. SARS's witness was Mr MP who is a VAT specialist in its employ and who dealt with the impugned Ruling.

---

[1] Value-Added Tax Act 89 of 1991.

[2] The appellant's covering letter to SARS is dated 13 October 2021.

[3] Unless otherwise indicated, all references to "rules" in this judgment are to the Tax Court rules.

**Legislative framework**

[5] The appellant is a registered bank and Value Added Tax (VAT) vendor. In terms of section 7 of the VAT Act the appellant is, subject to various exemptions, exceptions, deductions and adjustments, liable to pay VAT on goods and services supplied by it in the course or furtherance of its enterprise calculated at 15% on the value of the supply concerned.

[6] It is entitled to deduct, as input tax, the VAT incurred by it on goods and services acquired for the purposes of consumption, use or supply in the course of making taxable supplies. The core of its services is the provision of credit which services are VAT exempt in terms of section 12(*a*) read with section 2(1)(*f*) of the VAT Act.

[7] However, while the provision of credit services is VAT exempt, any fees, commissions or merchant discounts charged for rendering these services are specifically excluded from the exemption in terms of the proviso to section 2 of the VAT Act. Consequently, where a business makes both exempt and taxable supplies, as is the case with the appellant, its right to claim input tax is limited or must be apportioned. The ratio of apportionment is determined by the Commissioner.

[8] Section 17(1) of the VAT Act confers on the Commissioner a broadly formulated discretion to determine an apportionment ratio where goods or services are acquired for a mixed purpose. The ratio must reflect the extent to which the goods or services are intended to be consumed, used or supplied in the course of making taxable supplies, relative to their total intended use.

[9] The inquiry is directed at the intended use of the inputs, and the nature and extent of the activities for which those inputs are deployed, not at the turnover they happen to generate. The appellant correctly identifies this principle. However, identifying the correct principle does not determine its application. The question is rather which method more accurately reflects the appellant's *actual* input consumption. That is a question of fact requiring evidence.

[10] At the date of the appellant's request, the Commissioner had issued Binding General Ruling 16 (BGR 16). This ruling authorised vendors to apply the standard turnover based method of apportionment (BGR method) as a pre-approved method in determining the ratio contemplated in section 17(1). The same ruling provided that a vendor could only use this method if it was fair and reasonable. If not, then the vendor had to apply to SARS to use an alternative method.

[11] It is worth noting however that this was not the basis upon which the appellant approached SARS for a different ruling, i.e. that the BGR method was not appropriate. This is because: (a) the appellant had on various occasions prior to its ruling request, applied to SARS, and had been granted, various apportionment rulings in terms of section 17(1); and (b)

the ruling request of 21 September 2021 was on the basis that the Commissioner's previous ruling dated 12 August 2019, in terms of which a varied STB method (i.e. not that contained in BGR 16) was approved, did not render a fair and reasonable outcome when applied to the appellant's enterprise.

[12] While the "fair and reasonable" test derived from BGR 16 is thus not directly applicable to this dispute, the same considerations do however apply, since although section 17(1) gives the Commissioner a broadly formulated discretion to determine a ratio, the Constitutional Court has recognised that an element of fairness is required in the exercise of such a discretion.[4] SARS thus accepts that the exercise of the Commissioner's discretion must be arrived at in a fair and reasonable manner.

[13] The appellant contends that the test and the ratio are required to be determined with reference to present circumstances, not anticipated changes in the future or, put differently, that the phrase "intended use" in section 17(1) has nothing to do with anticipated future changes in the nature of the vendor's business. This is not an issue which we need determine since, as correctly pointed out by SARS, this was not the case pleaded by the appellant.

**Onus**

[14] The issue before the SCA was whether the jurisdiction of the Tax Court is engaged in instances where SARS refuses to make a section 17(1) determination in the terms sought by a taxpayer. SARS's argument before Myburgh AJ (and which was the substance of its special plea) was that in these instances the Tax Court has no jurisdiction, since such refusal does not constitute a "decision" subject to objection and appeal under the Tax Administration Act (TAA)[5] read with section 32(1)(*a*)(iv) of the VAT Act.[6]

[15] The SCA rejected this argument and found that: (a) the appellant made a request for approval of a very particular ratio calculation method; (b) SARS instead approved a substantively different method of ratio calculation; (c) although couched in the language of approval, the plain material effect of the Ruling was to refuse to approve the ratio calculation method sought; and (d) such decision fell within the intended scope of the remedy of objection and appeal provided in section 32(1)(*a*)(iv).[7]

---

4 *Dawood v Minister of Home Affairs* 2000 (3) SA 936 (CC) para 53.

5 Tax Administration Act 28 of 2011.

6 Section 32(1)(*a*)(iv) provides that one of the decisions which are subject to objection and appeal is the refusal to approve a method for determining the ratio contemplated in s 17(1) of the same (VAT) Act.

7 [2025] ZASCA 101 (8 July 2025) para 28.

[16] Section 102(1)(*f*) of the TAA reads as follows:

> **"102. Burden of proof.—**(1) A taxpayer bears the burden of proving—
>
> (*f*) whether a "decision" that is subject to objection and appeal under a tax Act, is incorrect."

[17] In its heads of argument before us SARS made the following submission:

> "45. Section 102(1)(*f*) of the TAA provides that a taxpayer bears the burden of proving whether a 'decision' that is subject to objection and appeal under a tax Act, is incorrect."
>
> 46. SARS' decision to authorise the dual method is subject to objection and appeal, as confirmed in *[the SCA decision].* The appellant thus bears the burden of proving that SARS' decision to approve the dual method is incorrect. This is axiomatic as the facts required to discharge the onus as to whether the TC method is the most appropriate and accurate method lie within the personal knowledge of the appellant."

[18] It was only during the course of argument in reply that it was contended on behalf of the appellant that: (a) a decision under section 32(1)(*a*)(iv) of the VAT Act is restricted to one refusing to approve the method requested for determining the ratio; (b) a different method "approved" in terms of section 17(1) is not a refusal as contemplated by the subsection; and (c) the burden of proof thus lay on SARS and not the appellant. This was understandably disputed by counsel for SARS in light of the SCA decision. In response and after further engagement with the court, counsel for the appellant then accepted that it bore the onus of proving that the TC method was appropriate but questioned whether SARS accepted that it then bore the onus of proving that the dual method approved in the Ruling was the correct one to apply. Given the timing of the appellant's contention the parties were given leave to file supplementary notes on the issue.

[19] In its supplementary note the appellant submitted that it does not bear any burden of proof in relation to the dual method imposed by SARS, and that if SARS wishes to rely on that method, then it carries the burden of proof. However, as correctly submitted by SARS in its supplementary note, no such burden lies with it, since the dual method imposed is not an issue in dispute on the pleadings and the court is thus not called upon to determine its correctness or otherwise. Put differently, SARS does not seek to have the dual method approved by the court and no relief is sought in relation thereto.[8] Accordingly the sole issue for determination is the appellant's appeal against the refusal by SARS to approve the TC method in respect of its entire business enterprise.

---

[8] Counsel for SARS confirmed that its request in para 128.2 of its heads of argument for the dual method to be approved was erroneous and was inserted *per incuriam*. It is not a claim advanced in the pleadings and is superfluous.

[20] Further, the appellant's submission that SARS bears an onus in relation to the dual method would, if accepted, result in an anomaly: the appellant would be entitled to succeed on appeal without affirmatively demonstrating that its preferred method is correct, merely by pointing to alleged deficiencies in SARS's alternative. That cannot be a proper construction of section 102(1)(*f*) of the TAA.

[21] Accordingly, evidence relating to the dual method is properly before this court, not as a matter requiring SARS to discharge an onus, but as part of the context within which this court evaluates whether the appellant has discharged its burden of proving that the TC method is the most appropriate method. The comparison of methods is relevant to, and forms part of, the assessment of the TC method's appropriateness, and nothing more.

**Relevant factual background, the evidence and critique thereof**

[22] The appellant was incorporated and commenced trading on 4 April 2016, subsequent to its predecessor being placed under curatorship and subsequently being renamed as RDS. The appellant provides its own services of banking and lending. It also administers loans on behalf of RDS in accordance with a service level agreement, for which it receives a monthly fee.

[23] As previously stated, its principal business is the provision of unsecured credit, for which it earns interest income, an exempt supply under section 12(*a*) read with section 2(1)(*f*) of the VAT Act. It also earns taxable fee income due to the provision of taxable supplies from loan administration, transactional banking services, card facilities, interchange fees, binder commissions and agency fees as per the proviso to section 2 of the VAT Act. Prior to 2019, its business comprised predominantly unsecured lending (microlending). From its 2019 financial year onward, the appellant expanded into transactional banking.

[24] The 2016 and 2017 rulings requested by the appellant and approved by SARS applied a varied STB method. On 23 November 2018, SARS approved the TC method requested by the appellant (November 2018 ruling)[9] but on the express and unambiguous condition that it would expire on 30 September 2020 (which was the end of its financial year) or at the end of the financial year in which the appellant first offered transactional banking services to the public, whichever was the earlier.

---

[9] Which was revised for reasons which are also not relevant.

[25] The November 2018 ruling took into account, amongst other matters, the following information which the appellant had provided:

> **"New transactional banking**
>
> 1.11 While *[you are]* currently in the process of launching a fully-fledged transactional offering which will bring *[your]* product offering and funding model more in line with that of other traditional banks, you have indicated that this will only become available during 2019. The launch of the new transactional business line may however be postponed.
>
> 1.12 From December 2017, *[you]* began piloting the new transactional banking model to *[your]* employees. *[Your]* transactional banking model will not include an overdraft facility (that is *[you]* will not generate any interest income transactions) and it is intended that either no monthly fees, or a very low monthly fee will be charged to account holders which will include a certain number/type of transactions. Transactions over and above will be subjected to a fee charged to the account holder. The current pilot programme to *[your]* employees follows this approach."

[26] After entering the public transactional banking market during its 2019 financial year, the appellant applied on 21 September 2020 for a continued TC method ruling. SARS declined and issued the Ruling on 23 September 2021, approving instead a dual method, being the varied STB method ("BASA method"[10]) for general mixed expenses, and the TC method for mixed expenses relating to the appellant's IT infrastructure. SARS was of the view that the evolution of the appellant's business to include transactional banking rendered continuation of the TC method inappropriate.

[27] In the appellant's September 2020 ruling request (authored by Mr CC) it was stated that, notwithstanding the introduction of transactional banking to the public in 2019, the appellant continued to predominantly conduct business as a microlender, although its enterprise could be summarised into three main divisions, namely the provision of: (a) loans and credit; (b) transactional banking services; and (c) loan account administration services.

[28] In the written request Mr CC motivated *inter alia* as follows:

> "3.1. A turnover-based apportionment methodology, such as the Big 4 New BASA method applied in the 2016 Ruling is not appropriate for *[the appellant],* because the composite nature of its business is complex and is predominantly aligned to that of a microlender and not that of mainstream commercial banks. This was the deciding factor in changing the methodology from a turnover-based apportionment methodology applied in the 2016 Ruling to an alternative method based on a transaction count methodology, as approved in the Subsequent Ruling."

---

[10] Banking Association of South Africa Class Ruling.

[29] However, the uncontested evidence of Mr MP (the witness for SARS) on this score was as follows. First, the activities conducted by the appellant after its introduction of transactional banking services in 2019 are *in fact* more aligned to those of a commercial bank rather than a microlender. Whereas commercial banks may provide lending activities (producing exempt interest income) as well as transactional banking (producing taxable fee income) a microlender *may not* provide transactional banking services.

[30] Second, the appellant is registered under the Banks Act[11] and provides services that only commercial banks are permitted to perform. There is no requirement that microlenders must be so registered, yet the appellant wishes to be treated, in effect, as a microlender – and hence wishing to continue with the application of the TC method while it was a predominantly a microlender – despite it now offering transactional banking which for a microlender *per se* is impermissible.

[31] Third, again on the uncontested evidence of Mr MP, the appellant's business is in fact more aligned to that of commercial banks, not only as a result of transactional banking, but also as a result of other taxable supplies, being: (a) making available its payment platform as issuing bank to acquiring banks in respect of which it earns interchange fees from such other banks; (b) supplying credit and debit card facilities for consideration in the form of annual fees, card replacement fees, funds transfer fees, payment fees, automated teller machine fees, VISA interchange fees, balance enquiry fees and SMS fees; and (c) acting as agent in the supply of electricity and airtime where commission is earned on each transaction.

[32] SARS also squarely addressed Mr CC's contention in its Ruling. In addition to much of that about which Mr MP testified, SARS explained its position as follows. Commercial banks should be aligned so that there is no unfair advantage between them in relation to apportioning mixed expenses, as underpinned by the time limit placed on the November 2018 ruling. SARS acknowledges that the appellant is not a fully-fledged commercial bank.[12] However, it regards the appellant's activities as being more akin to a commercial bank than a microlender, on the basis that the appellant "had moved in that direction" with the introduction of its transactional banking services to the public in 2019.

[33] The appellant contended that the discretion conferred on the Commissioner by section17(1) to determine the ratio is limited, on the plain wording of the subsection, to a "vendor specific" enquiry. Put differently, the appellant took issue with its understanding that

---

[11] Banks Act 94 of 1990

[12] The appellant did not have many of the service offerings of commercial banks such as home loans, online share trading facilities, business banking, corporate and wholesale banking, student loans, foreign exchange services, vehicle and asset finance, commodities trading, equities and fixed income reading.

SARS had considered the commercial banking industry to be the primary factor, or at least one of the main factors, to determine its ratio.

[34] It is noteworthy that SARS itself agreed with the appellant that an STB method was not appropriate or “tailormade” to the nature of the appellant’s overall enterprise. Where it disagreed was with an “across the board” TC method as contended for by the appellant. It was thus incumbent on the appellant to adduce evidence to prove on a balance of probabilities that the method upon which it relies is the one which is fair and reasonable in relation to its overall enterprise. Regrettably for the appellant, and which we hope to demonstrate below, it singularly failed to do so.

[35] Ms NN’s testimony is significant for what was conceded rather than what was asserted. This is no reflection on her since she was clearly honest and forthright. She agreed that apportionment seeks to determine the extent to which expenses are used for taxable versus exempt supplies, and that the VAT apportionment method adopted should reasonably reflect actual use. She confirmed that the TC method treats every transaction as carrying equal weight, for example, a R5 debit order and a R5 million financing transaction each count as one transaction. She conceded that all banking transactions are not economically equivalent, but that the TC method assumes that they are. The TC method accordingly ignores the economic value of the transaction, the revenue it generates, and the operational resources consumed in earning the relevant income stream. It thus prioritises numerical frequency over economic substance.

[36] These concessions are central to the outcome in this matter, but the appellant presented no empirical evidence, no cost analysis, no study of resource allocation, and no auditable data of any description to demonstrate that its shared operational costs (staff, systems, branch operations, call centres, compliance, treasury and risk functions) are driven by transaction volume rather than the scale and complexity of the financial activities those costs support. This evidence was necessary to prove that its input costs correlate more closely with its transaction volume (for purposes of the TC method advocated by it) as opposed to turnover value (as the varied STB method requires). Absent such evidence, the concessions made by Ms NN stand unrebutted and undermine the appellant’s case.

[37] Her testimony in chief was rather directed to explaining that after the introduction of transactional banking, this part of the business grew to some 1.9 million transactional accounts by the end of 2023 and currently stand at 4 million, most of which attract only fees, i.e. taxable supplies; yet, as previously stated, without also explaining how that correlated in actual terms for apportionment (or ratio) purposes against turnover value.

[38] She also accepted during her evidence in chief that the November 2018 ruling had approved the TC method as appropriate at that time for the following reasons. First, the provision of credit by the appellant resulted simultaneously in two income streams – one being interest, which is consideration for the exempt supply; and the other a fee, which is subject to VAT. Second, the transactional banking programme was at the pilot stage and the transactions surrounding this programme as well as other investment and savings products were very small in relation to the lending business of the appellant, with the result that it was not anticipated that the number of fee transactions would materially misstate the apportionment ratio.

[39] Mr MP testified that at that stage the apportionment ratio gave rise to deductibility of around 50% to 60% of the appellant's input tax. The evidence of Ms NN was that by the time the appellant had to apply in 2020 for a new ruling as a result of the introduction of transactional banking to the public, two-thirds of the accounts held by it were transactional banking accounts with only one-third relating to lending transactions. On the percentage figures presented by SARS, this had the consequence that the ratio increased in the appellant's favour to 79.97% in 2019 and 77.73% in 2020, whereas comparatively speaking, an application of the BASA method (using the appellant's own net interest margin) would have been 25.63% in 2019 and 23.55% in 2020.

[40] As contended by SARS, the net effect of this was that, in line with the further evidence of Ms NN, the economic driver of the business was interest income with only 10% relating to fee income, yet, paradoxically, the appellant was able to claim close to 80% of the input tax. Ms NN also testified that by applying the TC method approved in the November 2018 ruling, the appellant saw an increase in the ratio from 22% to 32%, which represented an approximate 50% increase in allowable input tax deductions.

[41] The TC method must be seen in the context of the following two factors: (a) interest (exempt) is the main revenue or economic driver of the appellant's business; but (b) fee-earning activities (taxable) generate the bulk of transactions. As correctly submitted by SARS, on the evidence of the appellant, that creates an imbalance in that the value-based measure (turnover) is heavily weighted toward interest and may overstate exempt use, whereas the volume-based measure (transactions) is heavily weighted towards fees and may overstate taxable use. In the absence of any evidential substratum to demonstrate the contrary, the generation of interest income was not shown by the appellant to be incidental to transaction-intensive activities.

[42] A foundational pillar of the appellant's case – with which SARS had no quibble in principle- is that the words "consumption", "use" and "supply" in section 17(1) have in common the requirement of an activity that will describe whether the goods or services will be consumed, used or supplied, how they will be consumed, used or supplied (which is value

driven) and this, compared to the total activities of consumption, use or supply will inform the ratio in which the VAT on the acquisition of the goods or services can be deducted as input tax in circumstances where a mixed purpose is present. The testimony of Ms NN failed to lay an evidential foundation to establish this.

[43] Mr CC, with no disrespect to him, was unable to take it any further since he was not called by the appellant in the capacity of expert and his opinions on matters falling into that category, which comprised most of his testimony, cannot be taken into account. In any event his evidence, to the extent that it was not impermissible opinion evidence, added nothing of substance to the appellant's case. His core contention was that the TC method is the only appropriate method for the appellant, and that the introduction of transactional banking did nothing material to alter the appellant's cost base. He went further, suggesting that no alternative method should apply.

[44] Although these are significant propositions, they were entirely unsupported by data. Again, no cost analysis, no empirical study of resource allocation, and no auditable comparison of the appellant's cost drivers before and after the introduction of transactional banking were placed by the appellant before the court. At the risk of repetition, this was necessary to show that its shared input costs are driven primarily by transaction activity rather than by the value and intensity of the financial activities they support. Mr CC's evidence amounted in substance to a restatement of the positions already contained in the ruling application and subsequent objection, being documents he had himself prepared This is not evidence; it is advocacy, and we were provided with no meaningful basis to accept that the TC method is the most appropriate.

[45] Returning to the evidence of Mr MP, and which was effectively uncontroverted, the TC method was retained for IT infrastructure in the Ruling because the cost of processing any transaction on the IT system is identical, whether the transaction is interest-bearing or fee-generating, making transaction counting genuinely apt in that specific context. The dual method produces an overall ratio of approximately 39% to 40%, as opposed to a much lower ratio had SARS approved the BASA method for the appellant's business. The dual method had the effect of granting the appellant an apportionment ratio in line with the "Big 4" commercial banks (FirstRand, ABSA, Nedbank and Standard Bank) which ranged between 40% to 50%. The TC method proposed by the appellant yields an apportionment ratio of approximately 80% (a figure described by Mr CC himself as "very high") which is self-evidently significantly also much higher than the dual and BASA methods. The 39% to 40% ratio is also self-evidently on the lowest range of the scale applicable to the largest mainstream commercial banks.

[46] In support hereof, Mr MP explained that when SARS concluded that the TC method was no longer appropriate as a general apportionment methodology, it did not simply impose the standard BASA method applicable to commercial banks, which would have yielded a significantly lower apportionment ratio. SARS instead approved a varied STB method that incorporated concessions for the high-interest-rate environment in which the appellant operates as well as its elevated level of irrecoverable debt, both of which were adjustments designed to accommodate the appellant's particular circumstances. The dual method, combining this varied turnover approach with the TC method for IT expenses, was an attempt to arrive at a fair result to the appellant given its "intermediate" position. This was not squarely or materially challenged in his cross-examination.

[47] Mr MP agreed with counsel for the appellant that the requirement for a fair method of apportionment is that the methodology must serve as a proxy for the underlying activity of the business concerned. He also agreed that another way of putting it is that one would expect a correlation between the incurring of costs giving rise to VAT which has to be apportioned on the one hand, and the generating of income on the other. This supports the need for the appellant to have laid a proper evidential foundation for its claim that a TC method was appropriate across the whole spectrum of its business activities.

[48] Insofar as the RDS service provided by the appellant is concerned, it conceded in its pleadings that only the taxable administrative fee must be included in its taxable supplies in the varied STB method. However, it alleged that the fee earned does not serve as an appropriate proxy for the effort involved in generating it, contending that the varied STB method grossly understates the extent to which its infrastructure is deployed in earning that fee. Again, no evidence was led to support this allegation; and as correctly pointed out by SARS, since the income on the administered loan book accrues to RDS and not the appellant, the only relevant transaction is the monthly management fee.

[49] Accordingly, the payment by RDS of that fee plays no role in evaluating the appropriateness or otherwise of the TC method. The VAT characterisation of the supply turns on what the appellant does, not on what income flows to RDS as a result. One cannot look to the type of income ultimately earned by RDS to reclassify the appellant's service as something other than what it plainly is: a taxable administrative service.

[50] During argument the appellant referred to a document titled "Input Tax Apportionment", a 2025 publication of the Federal Tax Authority of the United Arab Emirates, which describes the various alternative methods for determining VAT apportionment ratios. Our attention was drawn to the TC method as being one of those which is available to a bank. It was tendered as "corroborative evidence". In our view this took the matter no further, but in any event as pointed out by counsel for SARS, the same document reflects other comparative methods for a business of the appellant's description in general terms. The document, therefore, does not

advance the appellant's position (to the extent that any reliance could ever be placed on it in the particular circumstances of this matter); if anything, it equally serves as support for the view that the TC method is not universally regarded as the most appropriate for institutions that combine lending and transactional banking.

**Summation**

[51] Determining a fair ratio in terms of section 17(1) of the VAT Act does not have as its consequence that the applicant vendor is given the highest possible apportionment ratio resulting in the highest possible deductibility of input tax. It rather requires looking at the context of the particular business and the industry in which the business operates. The apportionment ratio must be a reflection of this.

[52] If the primary business is that of earning exempt interest income, that must be reflected fairly in the ratio. However absent evidence to prove that in the particular circumstances of the appellant's business such interest income is transaction-intensive, such that weight is based on transaction volume rather than economic substance, the TC method advocated by the appellant falls short of being found to be fair and reasonable.

[53] It systematically understates the extent to which costs are applied to exempt activities, thereby inflating the recoverable input tax, since the generation of interest does not exist in a vacuum. Axiomatically, interest income must depend on treasury functions, risk and compliance infrastructure and capital management systems which consume shared inputs, but which are not reflected in the TC method. To this we add that SARS also argued that turnover is drawn from audited records, whereas transaction counts depend on subjective choices (whether to count a declined card swipe, a reversal, and so on) and are open to manipulation.

[54] In our view, the appellant's narrow approach of looking at where most of the transactions happen is short sighted. The method for which it advocates mistakes operational frequency for economic use. The real question is which method best reflects the actual consumption of inputs in its business enterprise, but the appellant adduced no evidence in this regard.

[55] The commercial reality of a banking enterprise is that it is not merely a processor of payment events. It is a sophisticated financial institution whose income streams include: (a) taxable supplies, namely monthly account fees, card charges, ATM fees, merchant acquiring fees, administration fees and advisory fees; and (b) exempt supplies, namely lending activities, mortgage finance, instalment finance, overdraft facilities and interest-bearing credit products.

[56] The making of exempt supplies requires capital deployment, treasury management, credit risk modelling, arrears management, legal enforcement and regulatory compliance. The appellant's approach wrongly minimises these enterprise costs merely because fewer "countable transactions" arise. SARS took into account that the appellant does not perform all the functions of a banking institution, namely home loans, online share trading facilities and the like.[13] This was not ignored. However, it was satisfied, for all the reasons given, that the dual method, which incorporates the varied STB method and the TC method in respect of IT expenses, better reflects the economic significance and input intensity of the exempt activities undertaken by the appellant. Again, for all the reasons given, the appellant failed to discharge the onus of proving that the TC method propounded by it was the appropriate one.

**Order**

[57] The appeal is dismissed with no order as to costs.

**J I CLOETE**
**JUDGE OF THE HIGH COURT**

**P JANSE VAN RENSBURG**
**Accountant member**

**L-A GROENER**
**Commercial member**

[13] As set out more fully in fn 11 above.