VAT RULING: VR 011

DATE: 30 May 2025

ACT : VALUE-ADDED TAX ACT 89 OF 1991 (the VAT Act)
SECTION : SECTIONS 17(1) AND 41B
SUBJECT : APPORTIONMENT

Preamble

This value-added tax (VAT) ruling is published with the consent of the Applicant to which it has been issued and is binding only upon the South African Revenue Service (SARS) and applies only to the Applicant. This VAT ruling is published for general information. It does not constitute a practice generally prevailing.

1. Summary

This VAT ruling approves the method of apportionment being the varied turnover-based method which is applied to the Applicant a South African Real Estate Investment Trust (REIT)which is listed on the Johannesburg Stock Exchange (JSE) in the Real Estate Holdings and Development Sector.

2. Relevant tax laws

In this VAT ruling, all references to sections hereinafter are to sections of the VAT Act unless otherwise stated. Unless the context indicates otherwise any word or expression in this VAT ruling bears the meaning ascribed to it in the VAT Act.

This VAT ruling concerns the interpretation and application of the following provisions of the VAT Act:

- Section 1(1) – definition of "input tax"
- Section 16
- Section 17(1)

3. Parties to the application

The Applicant is a listed South African REIT in the Real Estate Holdings and Development Sector.

4. Description of the transactions

The Applicant is a REIT which conducts the following activities:

- To acquire investments in offshore commercial property-owning companies
- Hold investments in offshore commercial property-owning companies
- trades in asset-based financial services

The following income streams are received:

- Interest received on loans provided to foreign entities, which includes profit-participating loans, loans to foreign associates and joint ventures and intercompany bridge loans.
- Exempt income in the form of interest received from local banks on surplus funds.
- Foreign exchange gains and losses resulting from hedging transactions.
- Gains and losses resulting from derivative instruments.
- Dividend income received from offshore investments.

The Commissioner for SARS (the Commissioner) is requested to issue a ruling under section 41B, read with section 17(1), confirming that the Applicant may apply the varied turnover-based method which includes all income streams with the following variations:

include –

- in taxable supplies, the greater of net interest received on loans to foreign entities or the interest margin (being the Prime Interest Rate less JIBAR[1]) multiplied by the loan amount;
- in exempt supplies, a five-year moving average of net realised foreign exchange gains resulting from hedging transactions, which include net realised foreign exchange gains in relation to interest rate and cross currency swaps. In the event that a net loss is realised in a particular year, the Applicant will include such net realised loss as an absolute amount in the calculation of the five-year moving average;
- in exempt supplies, a five-year moving average of the net realised margin in relation to interest rate and cross currency swaps, being the net realised interest margin in relation to these instruments. In the event that a net loss is realised in a particular year, the Applicant will include such net realised loss as an absolute amount in the calculation of the five-year moving average;
- in non-taxable and non-supplies, dividend income to the extent of the difference between the Prime Interest Rate less JIBAR, multiplied by the five-year moving average of dividends received;

exclude –

- in exempt supplies, operational bank account interest;
- in non-taxable and non-supplies, exchange gains and losses not subject to hedging activities;
- in non-taxable and non-supplies, fair value adjustments to the extent that the amounts in relation thereto are unrealised gains or losses,

with effect from the commencement of the 2024 financial year.

1 Johannesburg Interbank Average Rate.

5. Conditions and assumptions

This VAT ruling is subject to the Standard Terms, Conditions and Assumptions issued by the Commissioner, and the provisions of Chapter 7 of the Tax Administration Act 28 of 2011, excluding sections 79(4)(*f*), (*k*), (6) and 81(1)(*b*).

6. Ruling

The VAT ruling made in connection with the transaction is as follows:

The Applicant may, for the purpose of determining the ratio to be applied to the VAT incurred relating to mixed expenses,[2] apply the varied turnover-based method of apportionment as set out below:

$$y = \frac{a}{(a + b + c)} \times \frac{100}{1}$$

where –

y = Apportionment ratio/percentage;

a = The value of all taxable supplies made during the period –

including –

- the greater of net interest received on loans to foreign entities or the interest margin (being the Prime Interest Rate less JIBAR) multiplied by the loan amount;

b = The value of all exempt supplies made during the period –

including –

- the greater of net interest on loans to local entities or the interest margin (Prime Interest Rate less JIBAR) multiplied by the loan amount;
- including a five-year moving average of the net realised margin in relation to cross-currency swaps;
- including a five-year moving average of net realised foreign exchange gains resulting from hedging transactions. In the event that a net loss is realised in a particular year, the Applicant should include such net realised loss as an absolute amount in the calculation of the five-year moving average;

excluding –

- bank interest received on current accounts with financial institutions which are used for the day-to-day operations of the Applicant;
- any realised foreign exchange gains and losses that do not result from trading or hedging activities, such as entering into forward exchange contracts; and

2 Refers to expenses incurred partly for making taxable supplies and partly for other non-taxable purposes (for example, exempt supplies or private use).

c = The sum of any other amounts of income not included in “a” or “b” in the formula, which were received, or which accrued during the period (whether in respect of a supply or not) –

including –

- a percentage of dividend income received from subsidiaries/foreign investments by applying the Prime Interest Rate less JIBAR, multiplied by the dividend amount. A five-year moving average of the dividend income received from foreign investments should be used as the dividend amount;

excluding –

- excluding fair value adjustments to the extent that the amounts in relation thereto are unrealised gains or losses.

Note: All income streams should be taken into account when determining the apportionment ratio based on the formula above, except as otherwise provided in the formula. All the other notes in respect of the formula for the standard turnover-based method contained in BGR 16[3] shall apply (where applicable).

Note: The Prime Interest Rate and JIBAR are the annual respective rates at the end of the financial year for which the apportionment ratio is calculated.

7. Period for which this ruling is valid

This VAT ruling applies only in respect of the transactions set out above and is valid from date of issue, applicable to tax periods commencing on or after 1 April 2023; and valid until 31 March 2026.

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3 Binding General Ruling (VAT) 16 (Issue 2) dated 30 March 2015.