

**VAT RULING: VR 002**

DATE: 27 February 2024

**ACT : VALUE-ADDED TAX ACT 89 OF 1991 (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 SARS and applies only to the Applicant. This ruling is published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling approves the method of apportionment being the transaction-based method which is applied to a vendor in the Stockbroking industry.

**2. Relevant tax laws**

In this 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 ruling bears the meaning ascribed to it in the VAT Act.

This 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 subsidiary of a Group Company and is an independent stockbroking company registered with the Johannesburg Stock Exchange (the JSE) and a member of the South Africa Institute of Stockbrokers (SAIS).

**4. Description of the transactions**

The Applicant offers equity trading services to its clients for which it charges fees such as brokerage/commission which is done on an agency basis. The Applicant also actively trades in the equity market for its own account and benefit, that is, as principal and earns exempt income from this activity.

The Applicant is a company which conducts the following activities:

- Transacting in JSE-listed instruments on an agency basis on behalf of institutional clients
- Entering into equity contracts for difference (CFD) and market-making in Exchange Traded Funds (ETF) and other JSE-listed instruments

The following income streams are received:

- Brokerage
- Profit or losses relating to the selling of derivatives (baskets of CFDs otherwise also referred to as portfolio swaps)
- Execution premium on these baskets of CFDs
- Other fee income
- Interest income
- Profit and losses relating to its trading in equities

The Commissioner for SARS (the Commissioner) is requested to issue a ruling under section 41B, read with section 17(1), confirming that the vendor may apply the transaction-based method of apportionment with effect from the commencement of the 2022 financial year.

## 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 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<sup>1</sup>, apply the transaction-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 total number of taxable transactions for the period

b = The total number of exempt transactions for the period

c = The total number of any other transactions not included in “a” or “b” in the formula which were generated during the period

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<sup>1</sup> Refers to expenses incurred partly for making taxable supplies and partly for other non-taxable purposes (for example, exempt supplies or private use).

A transaction will be counted as follows:

*Taxable transactions*

- Proprietary trading (S) – number of transactions per the BDA report
- Research services - the research services will also be counted based on the number of invoices issued by the Applicant

*Exempt transactions*

- Agency trading (C/DA) - number of transactions per the BDA report
- The interest earned by the Applicant must be included in the apportionment formula as follows:
  - Interest earned on operating account – one transaction per month which equates to 12 per annum
  - Interest earned on cash collateral placed (note that in some instances equities are placed as collateral on which no interest is earned) – as the collateral remains in place the interest earned would be counted in each month. For example, if the collateral is placed with the lender for 12 months, 12 exempt transactions would be included in the formula
  - Interest earned as a “lender of last resort” on collateral placed with the JSE – one transaction per month which equates to 12 per annum
  - Interest earned on collateral placed with the JSE in its capacity as a Clearing House - one transaction per month which equates to 12 per annum
  - The CFD and related margin settles daily. There are on average approximately 10 settlement transactions daily. This will be included in the formula as exempt
  - Execution Premiums are invoiced once per month

**7. Period for which this ruling is valid**

This VAT ruling applies only in respect of the transaction(s) set out above and is –

- (a) valid from date of issue;
- (b) applicable to the financial year commencing on 1 January 2022; and
- (c) valid until 31 December 2026.

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