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2015/39 (28/3/23)

**Date**  
15 June 2015

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Dear Mr Meyburgh

**VALUE-ADDED TAX: JOHANNESBURG STOCK EXCHANGE LIMITED – VAT  
REGISTRATION NUMBER: 4080119391 – TAX INVOICES/VAT EXCLUSIVE  
PRICE QUOTES**

I write with reference to your letter dated 7 May 2015, received by email on 11 May 2015, and set out below my response.

**1. BACKGROUND**

Based on the information you provided, it is understood that the position as you see it, is as follows:

- 1.1 Johannesburg Stock Exchange Limited (JSE) carries on the business, amongst others, of an exchange in respect of futures contracts, by managing and monitoring transactions entered into between buyers and sellers.
- 1.2 In certain cases the underlying commodities in respect of the futures contracts constitute agricultural products (i.e. goods). In these instances the parties can elect to either close out their positions by cash settlement before the traded contract expires, thereby avoiding the physical delivery of the goods, or by effecting actual delivery of the goods.
- 1.3 Due to the fact that at the time of entering into the futures contracts no certainty exists as to whether or not there will be physical delivery of the underlying commodities, JSE quotes prices of commodities futures contracts exclusive of value-added tax (VAT). For this reason, clauses to the futures contracts were added to specify that VAT will be added to the contract price upon invoicing (where delivery of the underlying commodities is taken).
- 1.4 Where physical delivery of the underlying goods does take place, VAT at the standard rate or zero rate, as the case may be, is added to the delivered price based on the standard contract terms (i.e. the standard discounts of location differentials, grade discounts and origin discounts are first deducted before VAT is applied).
- 1.5 Furthermore, in practice many buyers and sellers of futures contracts are required to enter into futures contracts through a third party (i.e. members or clearing members). As these members and clearing members are, in all likelihood, buyers and sellers of the futures themselves, confidentiality of the



client is imperative. In order to give effect to this confidentiality, JSE discloses the name of the client in a code form on the tax invoice (refer to paragraph 1.6 below), where the underlying goods are supplied upon termination of the futures contracts.

- 1.6 The tax invoices in relation to the futures contracts are issued by JSE and the name and registration number of JSE are reflected on the tax invoices. Furthermore, the client's VAT registration number is reflected at all times alongside the client code on the tax invoice. JSE has information linked to the codes associated with the name, address and other necessary information of each recipient. This information can thus be used to establish the particulars of the transactions covered by the futures contracts.
- 1.7 The Commissioner for the South African Revenue Service (the Commissioner) issued a VAT ruling dated 1 July 2010, under reference number 022/2010 (28/3/23) (the First Ruling), confirming, amongst others, that with regard to its business of an exchange in respect of futures contracts, JSE is permitted to, for confidentiality reasons, disclose the name of all its clients in code form on its tax invoices in terms of section 20(7) of the Value-Added Tax Act, No. 89 of 1991 (the VAT Act).
- 1.8 Following a request by JSE, the Commissioner issued a VAT ruling dated 20 January 2012, under reference number 174/2011 (28/3/23) (the Second Ruling), in terms of which the First Ruling was amended by further confirming, amongst others, that JSE is with regard to its business of an exchange in respect of futures contracts, permitted, in terms of section 20(7) of the VAT Act, to issue tax invoices which do not contain the address of the recipient. The Second Ruling expired on 17 February 2015.
- 1.9 There have been no material changes to the nature of JSE's business activities.

## **2. REQUEST**

JSE requests the Commissioner to issue a VAT ruling in terms of section 41B of the VAT Act confirming the rulings referred to in paragraphs 1.7 and 1.8.

## **3. THE LAW**

For ease of reference, the relevant sections of the VAT Act are quoted in the attached Annexure A. All references to sections hereinafter are to sections in the VAT Act, unless otherwise stated.

## **4. APPLICATION OF THE LAW**

### ***The buying and selling of futures contracts***

- 4.1 The buying or selling of futures contracts by JSE as per paragraph 1 constitutes the buying or selling of a derivative and is therefore a "financial service" as contemplated in section 2(1)(k). In this instance, the supply is in terms of section 12(a) exempt from the VAT levied in terms of section 7(1)(a).
- 4.2 The requirement for a tax invoice to be issued in terms of section 20 is not applicable where the supply is not a taxable supply. As the buying and selling of futures contracts by JSE is exempt from VAT (that is, a "non-taxable supply") any invoice issued in respect thereof is not required to



comply with section 20(1) or to contain the particulars stipulated in section 20(4) or section 20(5), as the case may be.

- 4.3 Section 65 requires prices to be quoted inclusive of VAT in instances where a vendor is making a taxable supply. This requirement therefore does not apply to the buying and selling of futures contracts, as the supply is exempt from VAT as discussed above.

***Supply of the underlying agricultural products***

- 4.4 In terms of the *proviso* to section 2(1)(k), where JSE's client chooses to acquire the underlying agricultural products, the supply of the underlying products is separate from the above financial service and is therefore a "taxable supply". In this instance, a tax invoice complying with section 20 is required to be issued. This tax invoice must contain all particulars prescribed by section 20(4) or section 20(5), as the case may be.
- 4.5 In terms of section 20(7), where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of a supply and that it would be impractical to require that a full tax invoice be issued, the Commissioner may direct, in terms of section 20(7)(a), that one or more of such particulars not be contained in the tax invoice or, in terms of section 20(7)(c), that such particulars be furnished in any other manner.
- 4.6 On the basis that the transactions managed by JSE for the buying and selling of futures contracts require confidentiality of the recipients (see paragraph 1.5 above), the Commissioner is satisfied that if and when the underlying agricultural goods are acquired –
- 4.6.1 it would be impractical to require that any tax invoice issued in respect of such supplies contain the name and address of the recipient; and
- 4.6.2 there will be sufficient records available to establish the particulars of such separate supplies of the agricultural goods (refer to paragraph 1.6);
- 4.7 With regard to the situation where the agricultural products are acquired, the statement in the contracts to the effect that in such instances, VAT will be added to the price quoted, is sufficient to satisfy the requirement of section 65, to quote all prices inclusive of VAT.

**5. RULING**

- 5.1 In light of paragraph 4.2, JSE is not required to issue a tax invoice as required by sections 20(4) or 20(5) with regard to the buying and selling of futures contracts as detailed in paragraph 1.
- 5.2 Where JSE's clients choose to acquire the underlying agricultural products as detailed in paragraph 1, JSE is permitted to –
- 5.2.1 issue tax invoices which do not contain the address of the recipient in terms of section 20(7)(a); and
- 5.2.2 disclose the name of the clients in code form on its tax invoices in terms of section 20(7)(c).

- 5.3 The arrangement contained in the futures contracts, to add VAT on the prices if the underlying products are acquired complies with section 65.
- 5.4 This VAT ruling is effective from 18 February 2015 and is subject to the standard conditions and assumptions set out in the attached Annexure B.

Yours faithfully



L van Niekerk  
**MANAGER**  
**INTERPRETATION AND RULINGS**



**Extracts from the VAT Act:****Section 1(1)**

*“exempt supply” means a supply that is exempt from tax under section 12;*

*“financial services” means the activities which are deemed by section 2 to be financial services;*

*“taxable supply” means any supply of goods or services which is chargeable with tax under the provisions of section 7(1)(a), including tax chargeable at the rate of zero per cent under section 11;*

**Section 2(1)**

*For the purposes of this Act, the following activities shall be deemed to be financial services:*

**Section 2(1)(k)**

*the buying or selling of any derivative or the granting of an option: Provided that where a supply of the underlying goods or services takes place, that supply shall be deemed to be a separate supply of goods or services at the open market value thereof: Provided further that the open market value of those goods or services shall not be deemed to be consideration for a financial service as contemplated in this paragraph:*

**Section 7(1)**

*Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax—*

- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;*
- ...*

*calculated at the rate of 14 per cent on the value of the supply concerned or the importation, as the case may be.*

**Section 12(a)**

*The supply of any of the following goods or services shall be exempt from the tax imposed under section 7(1)(a):*

- (a) The supply of any financial services, but excluding the supply of financial services which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11;*

**Section 20**

- (1) Except as otherwise provided in this section, a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8(10)) to a recipient, must within 21 days of the date of that supply issue a tax invoice containing such particulars as are specified in this section: Provided that—*
- ...*

- (4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:*
- ...*

- (b) the name, address and VAT registration number of the supplier;*

- (c) *the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient;*  
...
- (g) *either—*
  - (i) *the value of the supply, the amount of tax charged and the consideration for the supply; or*
  - (ii) *where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged;*
- ...
- (5) *Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed R5 000, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:*  
...
- (b) *the name, address and VAT registration number of the supplier;*  
...
- (e) *either—*
  - (i) *the value of the supply, the amount of tax charged and the consideration for the supply; or*
  - (ii) *where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged;*
- ...
- (7) *Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies, and that it would be impractical to require that a full tax invoice be issued in terms of this section, the Commissioner may, subject to such conditions as the Commissioner may consider necessary, direct—*
  - (a) *that any one or more of the particulars specified in subsection (4) or (5) shall not be contained in a tax invoice; or*
  - (b) *that a tax invoice is not required to be issued; or*
  - (c) *that the particulars specified in subsection (4) or (5) be furnished in any other manner.*

### **Section 41B**

- (1) *The Commissioner may issue a VAT class ruling or a VAT ruling and in applying the provisions of Chapter 7 of the Tax Administration Act, a VAT class ruling or a VAT ruling must be dealt with as if it were a binding class ruling or a binding private ruling, respectively: Provided that—*
  - (i) *the provisions of section 79(4)(f) and (k) and (6) of the Tax Administration Act shall not apply to any VAT class ruling or VAT ruling;*
  - (ii) *an application for a VAT class ruling or a VAT ruling in terms of this section shall not be accepted by the Commissioner if the application—*



- (aa) is for an advance tax ruling that qualifies for acceptance in terms of Chapter 7 of the Tax Administration Act; and
- (bb) falls within a category of rulings prescribed by the Minister by regulation for which applications for rulings in terms of this section may not be accepted.

(2) For the purposes of this section—

**“VAT class ruling”** means a written statement issued by the Commissioner to a class of vendors or persons regarding the interpretation or application of this Act;

**“VAT ruling”** means a written statement issued by the Commissioner to a person regarding the interpretation or application of this Act.

### **Section 65**

Any price advertised or quoted by any vendor in respect of any taxable supply of goods or services shall include tax and the vendor shall in his advertisement or quotation state that the price includes tax, unless the total amount of the tax chargeable under section 7(1)(a), the price excluding tax and the price inclusive of tax for the supply are advertised or quoted by the vendor: Provided that—

...

**STANDARD CONDITIONS AND ASSUMPTIONS*****Basis of this VAT ruling and the rulings given in this letter***

1. This VAT ruling letter and the rulings set forth herein are based solely upon the following –
  - 1.1 the information, documents, representations, facts and assumptions that are included or referenced in this ruling being true and accurate;
  - 1.2 any legal agreements or contracts entered into (or proposed to be entered into) in connection with the transaction being legally valid and enforceable in accordance with their stated terms, the parties to those agreements timeously satisfying their obligations under those agreements, and those agreements otherwise being carried out in accordance with their terms; and
  - 1.3 the tax laws, regulations, binding general rulings, and cases in effect as of the date of this VAT ruling. In particular, the rulings set forth in this VAT ruling are based solely upon the interpretation and application of the tax laws as amended and in effect as of the date of this VAT ruling, as well as any applicable regulations, general binding rulings or cases in effect, as of that date.
2. The ruling set forth in this ruling letter only applies to the provisions of the tax laws identified in this VAT ruling in connection with the transaction described herein.

***The Commissioner's understanding of the transaction***

3. This ruling letter and the rulings set forth herein are based upon the Commissioner's understanding of the transaction as described herein.

***Please note that if you believe that this understanding is incorrect, inaccurate or incomplete, it is your obligation to notify the Commissioner immediately. The failure to rectify a misunderstanding of a material fact may result in the ruling being withdrawn or modified.***

***Subsequent changes in the tax laws***

4. This VAT ruling will cease to be effective upon the occurrence of any of the following circumstances:
  - 4.1 The provisions of the tax laws that are the subject of this VAT ruling are repealed or amended; or
  - 4.2 A court overturns or modifies an interpretation of the provisions of the tax laws on which the rulings set forth herein are based unless –
    - 4.2.1 the decision is under appeal;
    - 4.2.2 the decision is fact-specific and the general interpretation upon which the rulings were based is unaffected; or
    - 4.2.3 the reference in the decision to the interpretation upon which the rulings were based is *obiter dicta*.



5. In any of these situations, the VAT ruling letter and any rulings set forth herein will cease to be effective immediately upon –
  - 5.1 the effective date of the repeal or amendment of the provisions in question; or
  - 5.2 the date of the judgment,
 whichever is applicable. The Commissioner is not obligated to notify you or to otherwise publish a notice of withdrawal or modification.

***Fraud, misrepresentation, or non-disclosure***

6. This VAT ruling letter and the rulings set forth herein are void *ab initio* if any of the following circumstances exist or occur –
  - 6.1 any facts stated in your application regarding the transaction are materially different from the transaction actually carried out;
  - 6.2 there is fraud, misrepresentation or non-disclosure of a material fact; or
  - 6.3 any condition or assumption stipulated by the Commissioner in this VAT ruling is not satisfied or carried out.
7. A fact is considered material if it would have resulted in a different ruling had the Commissioner been aware of it when issuing this VAT ruling.

***Other requirements and limitations***

8. This VAT ruling as set out in paragraph 5, is binding in terms of section 41B of the VAT Act, subject to any other requirements and limitations set forth in Chapter 7 of the Tax Administration Act, No. 28 of 2011 (the TA Act), as well as any requirements and limitations set forth in any binding general ruling issued by the Commissioner pursuant to section 90 of the TA Act.

**THIS RULING LETTER AND THE RULINGS SET FORTH IN IT ONLY APPLY TO THE APPLICANT IDENTIFIED HEREIN. PURSUANT TO SECTION 82(4) OF THE TA ACT, THIS RULING LETTER MAY NOT BE CITED IN ANY PROCEEDING BEFORE THE COMMISSIONER OR THE COURTS OTHER THAN A PROCEEDING INVOLVING THE APPLICANT IDENTIFIED HEREIN.**