



GST Treatment of Financial Services

Australia • South Africa

July 2014

LL File No. 2014-011012
LRA-D-PUB-000137

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

Australia

Kelly Buchanan
Chief, Foreign, Comparative, and
International Law Division I

SUMMARY The general rule under Australia’s Goods and Services Tax (GST) system is that financial supplies are exempt from GST and the provider cannot claim input tax credits for acquisitions related to making such supplies. The relevant regulations provide detailed lists of what are and what are not considered financial supplies. The law also provides exceptions to the general rule, allowing for entities to claim input tax credits for purchases related to providing financial supplies where the “financial acquisitions threshold” is not exceeded, where the acquisition relates to borrowing money that will be used to make taxable or GST-free supplies, or where the purchases are “reduced credit acquisitions” eligible for a reduced input tax credit.

I. Introduction

The collection of Goods and Services Tax (GST) in Australia, and the payment of input tax credits to entities for GST paid on business-related expenses, is primarily governed by

- A New Tax System (Goods and Services Tax) Act 1999 (Cth)¹ (GST Act), and
- A New Tax System (Goods and Services Tax) Regulations 1999 (Cth)² (GST Regulations).

The supply of financial products and services is subject to various provisions in these two instruments. The GST legislation is administered by the Australian Taxation Office (ATO).

II. Overview of GST Treatment of Financial Supplies

Under the GST Act, “financial supplies” are categorized as being input-taxed supplies, meaning that they are not subject to GST (i.e., they are exempt or not taxable) and the supplier cannot claim input tax credits for GST paid on things it acquires for the purpose of providing such

¹ A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act), <http://www.comlaw.gov.au/Details/C2014C00187>.

² A New Tax System (Goods and Services Tax) Regulations 1999 (Cth) (GST Regulations), <http://www.comlaw.gov.au/Details/F2013C01008>.

supplies.³ Exported financial services, however, are generally GST-free supplies, rather than input taxed, and so input tax credits may be claimed.⁴

The GST Regulations define and provide examples of what is,⁵ and what is not,⁶ a financial supply. More detailed examples of both are also set out in schedules to the Regulations.⁷ Broadly, financial supplies include the following:⁸

- Lending or borrowing money
- Granting credit to a customer
- Buying or selling shares or other securities;
- Creating, transferring, assigning, or receiving an interest in, or right under, a superannuation fund
- Providing or receiving credit under a hire purchase agreement entered into before July 1, 2012 (the provision of credit under hire purchase agreements entered from that date is taxable)

Things that are not considered financial supplies and therefore treated as taxable supplies include general insurance, finance leases, debt collection services, and professional advice or brokering services.⁹

In the Explanatory Statement issued upon the making of the original GST Regulations, the Australian Treasurer stated the following rationale for the rules relating to financial supplies:

The regulations follow the general rule that where a financial supply provider is able to earn a return on a financial product, the supply of a financial product will be a financial supply and input taxed. A financial supply provider is generally able to earn a return by way of a margin where they hold a legal interest in the financial product before it is supplied. For example, Company A is able to earn a return by way of a margin by buying shares from Company B and then selling them to Company C. The regulations overcome

³ GST Act s 40-5. See generally *Financial Services – Questions and Answers*, AUSTRALIAN TAXATION OFFICE (ATO), <https://www.ato.gov.au/Business/Consultation--Business/In-detail/GST-issues-registers/Financial-services--questions-and-answers/> (last updated June 17, 2013). For a discussion of the Australian approach and provisions see Kavita Benedict, *The Australian GST Regime and Financial Services: How Did We Get Here and Where Are We Going?*, 9(2) EJOURNAL OF TAX RESEARCH 174 (Dec. 2011), <http://www.austlii.edu.au/au/journals/eJITaxR/2011/10.html>.

⁴ PHILIP MCCOUAT, AUSTRALIAN MASTER GST GUIDE 259 (CCH Australia Ltd., 9th ed. 2008).

⁵ GST Regulations, reg 40-5.09.

⁶ *Id.* reg 40-5.12.

⁷ *Id.* schs 7 & 8.

⁸ *Financial Supplies*, ATO, <https://www.ato.gov.au/Business/GST/When-to-charge-GST-%28and-when-not-to%29/Input-taxed-sales/Financial-supplies/> (last updated Feb. 24, 2014).

⁹ MCCOUAT, *supra* note 4, at 239. For a full list see GST Regulations, reg 40-5.12.

difficulties in identifying the value added margin on individual transactions. Input taxation does not require the valuation of a financial service.

All other financial services, including agency services, are generally not capable of being charged for by way of a margin. This is because the facilitator of such financial services do not hold a legal interest in a financial product before it is supplied. All other financial services will therefore be taxable. For example, fees or commissions relating to agency services are easily identified and valued and are taxable.¹⁰

III. General Requirements

All of the supplies that a financial supplier makes are not necessarily treated as financial supplies, and “not every financial supply will be made by a financial institution.”¹¹ In order to be a financial supply, subdivision 40-A of the GST Regulations requires that the following must apply:

- (1) There must be a “provision,” “acquisition,” or “disposal,” of an “interest” in an item specified in a table in the regulations. The quoted terms are defined in the regulations:
 - An “interest” is “anything that is recognized at law or in equity as property of any form.”¹² Examples of interests given in the definition are: a debt or a right to credit; an interest conferred under a public or private superannuation scheme; a mortgage over land or premises; a right under a contract of insurance or a guarantee; a right to receive a payment under a derivative; a right to future property.
 - A “provision” of an interest “includes allotment, creation, grant and issue of the interest.”¹³
 - “Disposal” of an interest “includes assignment, cancellation, redemption, transfer and surrender of the interest.”¹⁴
 - “Acquisition, in relation to the provision or disposal of an interest, includes acceptance and receipt of the interest.”¹⁵

The specified items include:¹⁶

- A bank account
- A debt, credit arrangement, or right of credit

¹⁰ A New Tax System (Goods and Services Tax) Regulations 1999: Explanatory Statement, <http://archive.treasury.gov.au/documents/332/HTML/docshell.asp?URL=em.asp>.

¹¹ MCCOUAT, *supra* note 4, at 239.

¹² GST Regulations, reg 40-5.02.

¹³ *Id.* reg 40-5.03.

¹⁴ *Id.* reg 40-5.04.

¹⁵ *Id.* reg 40-5.05.

¹⁶ *Id.* reg 40-5.09(3).

- A mortgage
- A superannuation fund
- An annuity or allocated pension
- Life insurance business
- A guarantee
- An indemnity
- Credit under a hire purchase agreement entered into before July 1, 2012
- Australian or foreign currency, or an agreement to buy or sell currency
- Securities
- A derivative

(2) The provision, acquisition, or disposal of an interest in a specified item must be¹⁷

- For consideration,
- In the course or furtherance of an enterprise, and
- Connected with Australia.

(3) The entity that provides, acquires, or disposes of an interest must be a “financial supply provider” and must be registered or required to be registered.¹⁸ An entity is a “financial supply provider” if it was the owner of the interest immediately before its supply; the creator of the interest; or the acquirer of the interest.¹⁹ If an entity facilitates the supply of the interest for a financial supply provider it is a “financial supply facilitator” rather than a provider (e.g., an agent who facilitates a share transaction).²⁰

The ATO has issued a general ruling detailing the GST treatment of financial supplies and related acquisitions.²¹

IV. Apportioning Input Tax Credits

Where an entity provides input taxed financial supplies as well as other supplies that are taxable or GST-free it can only claim input tax credits for business inputs that relate to these latter types

¹⁷ *Id.* reg 40-5.09(1)(a).

¹⁸ *Id.* reg 40-5.09(1)(b).

¹⁹ *Id.* reg 40-5.06.

²⁰ *Id.* reg 40-5.07. *See also* MCCOUAT, *supra* note 4, at 241.

²¹ GSTR 2002/2, *Goods and Services Tax: GST Treatment of Financial Supplies and Related Supplies and Acquisitions* (consolidated version Dec. 20, 2013), <http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20022/NAT/ATO/00001>.

of supply.²² In such cases, an apportionment will be necessary.²³ The GST legislation does not prescribe a particular method for apportioning input tax credits. However, the ATO has issued a detailed ruling setting out its views on issues of apportionment for financial supply providers.²⁴

The general rule is that the apportionment method must be fair and reasonable in the circumstances, reflect the use (or intended use) of acquisitions in making input taxed supplies and other supplies, and the entity's decisions and reasoning on the choice of method must be appropriately documented.²⁵

The ATO ruling indicates that the "direct estimation" method of apportionment is preferable compared to "indirect estimation" methods²⁶ and that this "usually gives an accurate estimation of how an acquisition or importation is intended to be used or is used."²⁷ This method "involves matching the cost of certain "sole purpose" acquisitions to certain activities, and allocating mixed purpose costs to specific outputs in accordance with an internal cost allocation system."²⁸ The ruling states that if an entity's accounts "satisfy Australian Accounting Standards, or prudential requirements of similar rigor, the Commissioner considers that they may provide an appropriate foundation for applying the direct estimation method, subject to that application being fair and reasonable" in the entity's individual circumstances.²⁹

V. Exceptions

Despite the general rule that input tax credits cannot be claimed on acquisitions related to making financial supplies, in some cases credits can be claimed for the GST paid on purchases that an entity uses to make a financial supply. This includes where the person supplies a relatively small amount of financial supplies as compared to their taxable or GST-free supplies;³⁰ where the purchase relates to an amount that the person borrowed and used to make a non-input-

²² MCCOUAT, *supra* note 4, at 250.

²³ See generally *GST Apportionment Guide for Financial Supply Providers*, ATO, <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Financial-services-and-insurance/GST-apportionment-guide-for-financial-supply-providers/> (last updated May 24, 2014).

²⁴ GSTR 2006/3, *Goods and Services Tax: Determining the Extent of Creditable Purpose for Providers of Financial Supplies* (consolidated version Dec. 11, 2013), <http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20063/NAT/ATO/00001>.

²⁵ MCCOUAT, *supra* note 4, at 251. See also GSTR 2006/3, *supra* note 24, ¶¶ 33 & 73; *Fair and Reasonable Principles of Apportionment*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Financial-services-and-insurance/GST-apportionment-guide-for-financial-supply-providers/?page=3#Fair_and_reasonable_principles_of_apportionment (last updated May 24, 2014).

²⁶ GSTR 2006/3, *supra* note 24, ¶ 93; MCCOUAT, *supra* note 4, at 251.

²⁷ GSTR 2006/3, *supra* note 24, ¶ 95.

²⁸ MCCOUAT, *supra* note 4, at 251.

²⁹ GSTR 2006/3, *supra* note 24, ¶ 100.

³⁰ GST Act s 11-15(4). See *GST Definitions: Financial Acquisitions Threshold*, ATO, https://www.ato.gov.au/Business/GST/How-GST-works/Definitions/#Def_FinancialAcquisitionsThreshold (last updated Feb. 21, 2014).

taxed supply; or where the purchase qualifies as a “reduced credit acquisition,”³¹ in which case a reduced input tax credit can be claimed.³²

A. Financial Acquisitions Threshold

Division 189 of the GST Act provides that a person is entitled to input tax credits for acquisitions related to financial supplies (even though financial supplies are input taxed) if the financial acquisitions threshold is not exceeded. A “financial acquisition” is defined as “an acquisition that relates to the making of a financial supply (other than a financial supply consisting of a borrowing).”³³ The ATO explains that

an entity exceeds the financial acquisitions threshold at a time in a particular month if, assuming that all the financial acquisitions it has made, or is likely to make, during the 12 months ending at the end of that month, or during that month and the next 11 months, were made solely for a creditable purpose, either or both of the following would apply:

- the amount of all the input tax credits to which the entity would be entitled for its financial acquisitions would exceed \$150,000 or such other amount specified in the GST regulations; and
- the amount of the input tax credits to which the entity would be entitled for its financial acquisitions would be more than 10% of the total amount of the input tax credits to which the entity would be entitled for all its acquisitions and importations (including the financial acquisitions) during either of the periods referred to in this paragraph.³⁴

The above test reflects both a current-year component and a projected-year component, requiring an entity to calculate the financial acquisitions that it has made (or is likely to make) in the current month and the previous eleven months, as well as those that that it is likely to make in the next eleven months. It then works out “the input tax credits that would apply to those acquisitions if they had been made for a creditable purpose.”³⁵ If these credits exceed either \$150,000 or 10% of the total tax credits claimed for that year the threshold has been exceeded and the entity is not entitled to credits for the GST paid on financial acquisitions.

The ATO has issued a specific ruling detailing various aspects of the application of the financial acquisitions threshold.³⁶

³¹ See *GST Definitions: Reduced-credit Acquisitions*, ATO, https://www.ato.gov.au/Business/GST/How-GST-works/Definitions/#Def_ReducedCreditAcquisitions (last updated Feb. 21, 2014).

³² *GST: Financial Supplies*, ATO, <https://www.ato.gov.au/Business/GST/When-to-charge-GST-%28and-when-not-to%29/Input-taxed-sales/Financial-supplies/> (last updated Feb. 24, 2014).

³³ GST Act s 189-15.

³⁴ GSTR 2002/2, *supra* note 21, ¶ 14. See also GST Act ss 189-5 & 189-10.

³⁵ MCCOUAT, *supra* note 4, at 253.

³⁶ GSTR 2003/9, *Goods and Services Tax: Financial Acquisitions Threshold* (consolidated version Dec. 11, 2013), <http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20039/NAT/ATO/00001>.

B. Input Tax Credits for Borrowing Expenses

Borrowing “is a financial supply and would normally be input taxed.”³⁷ However, subsection 11-15(5) of the GST Act allows an entity to claim input tax credits for acquisitions that would otherwise be denied (by virtue of paragraph 11-15(2)(a)), “to the extent that the acquisition relates to making a financial supply consisting of a borrowing and the borrowing relates to the entity making supplies that are not input taxed.”³⁸ This means that “if you borrow money and use it to make taxable or GST-free supplies, you may claim input tax credits for the borrowing-related expenses.”³⁹

Australian authorized deposit-taking institutions (ADIs), however, are not able to claim input tax credits for acquisitions that relate to financial supplies consisting of borrowing through a deposit account, even where the borrowing relates to making supplies that are not input-taxed.⁴⁰ This follows amendments to the GST Act made in 2012.⁴¹

C. Reduced Credit Acquisitions

Division 70 of the GST Act provides that acquisitions of a specified kind may give rise to a reduced input tax credit (RITC), despite being related to the making of input taxed financial supplies.⁴² A detailed list of acquisitions that are considered “reduced credit acquisitions” and therefore eligible for a RITC is included in the GST Regulations.⁴³ These “largely represent services that financial institutions have outsourced in recent years,”⁴⁴ with the reduced credit being “designed to reduce the bias between insourcing and outsourcing the relevant services.”⁴⁵

The amount to which the input tax credit is reduced is specified in the GST Regulations, being 75% for most eligible acquisitions.⁴⁶ Credits for some acquisitions are reduced to 55%. The GST Act provides the method for calculating the amount of the RITC that may be claimed.⁴⁷ As with other input tax credits, the 75% credit is “further proportionally reduced if the recipient does

³⁷ MCCOUAT, *supra* note 4, at 254.

³⁸ Tax Laws Amendment (2011 Measures No. 9) Bill 2011: Explanatory Memorandum ¶ 5.10, <http://www.comlaw.gov.au/Details/C2011B00254/Explanatory%20Memorandum/Text>.

³⁹ MCCOUAT, *supra* note 4, at 255.

⁴⁰ GST Act s 11-15(5)(a).

⁴¹ Tax Laws Amendment (2011 Measures No. 9) Act 2012 (Cth), sch 3, <http://www.comlaw.gov.au/Details/C2012A00012>. See also *New Legislation: GST Financial Supply Provisions*, ATO, <https://www.ato.gov.au/General/New-legislation/Previous-years/Indirect-taxes/GST-financial-supply-provisions/> (last updated Sept. 28, 2012).

⁴² GST Act s 70-5.

⁴³ GST Regulations, reg 70-5.02(2).

⁴⁴ MCCOUAT, *supra* note 4, at 255.

⁴⁵ *Id.* at 257.

⁴⁶ GST Regulations, reg 70-5.03.

⁴⁷ GST Act s 70-15.

not provide the whole of the consideration, or the acquisition is partly for private purposes.”⁴⁸ Furthermore, “if the acquisition is partly for making financial supplies and partly for normal creditable purposes, the 75% credit applies only to the financial component and the normal rules apply to the balance.”⁴⁹

Therefore, an entity can claim 75% of any GST included in the purchase price of a reduced credit acquisition. However, it may not claim the 75% credit to the extent that the supplier would be entitled to an input tax credit under either the financial acquisitions threshold exception or the exception for borrowing expenses.⁵⁰

The ATO has issued a ruling containing detailed guidelines on different types of reduced credit acquisitions.⁵¹

⁴⁸ MCCOUAT, *supra* note 4, at 257.

⁴⁹ *Id.*; GST Act s 70-20. For a discussion of RITC in relation to “bundling” of different elements in a single service see Ross Stitt, *Financial Supplies: Bundling and Unbundling*, 9(2) EJOURNAL OF TAX RESEARCH 194 (2011), <http://www.austlii.edu.au/au/journals/eJITaxR/2011/11.html>.

⁵⁰ MCCOUAT, *supra* note 4, at 255.

⁵¹ GSTR 2004/1, *Goods and Services Tax: Reduced Credit Acquisitions* (consolidated version July 24, 2013), <http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20041/NAT/ATO/00001>.

South Africa

Hanibal Goitom
Foreign Law Specialist

SUMMARY In an attempt to establish a more efficient and transparent tax system, South Africa replaced its general sales tax (GST), which had been in place since 1978, with a value-added tax (VAT) in 1991. Although it had a lower rate at the time of its rollout, the current VAT rate for standard-rated supplies is 14%. A tax on consumption, the VAT generally applies to a number of activities, including the supply of goods or services, importation of any goods, and the supply of imported services.

Various activities that are considered financial services are exempt from the VAT; however, the VAT applies to certain financial services considered zero-rated supplies (including services rendered to nonresidents) and certain financial services related activities (in particular, any fees, commissions, merchant's discount, and similar charges that relate to financial services).

I. Introduction

South Africa introduced a value-added tax (VAT) in 1991 to replace the general sales tax (GST), which had been in place since 1978.¹ The introduction of the VAT was largely intended to correct inefficiencies of the GST. Some of the inefficiencies included its limited application; failure to ensure the proper implementation of applicable taxes, including through underreporting; and allowance of double taxation.² Two South African experts on financial investments have described the problems of the GST as follows:

Sales tax [GST] was essentially only collected at the end of the production/distribution chain by registered vendors disposing of goods or rendering taxable services to the end user and not by each vendor in the production or distribution chain. Under GST, retailers and vendors had to apply for a sales tax exemption number and would then be exempt from paying sales tax on any purchases. Such vendors and retailers were, however, supposed to pay sales tax on any product of which they themselves were the end users. Large-scale misuse of the exemption certificates and very few checks and balances to ensure that the end user did in fact pay the sales tax resulted in the change to the system of value-added tax (VAT).³

The advent of the VAT brought a number of changes. Unlike the GST, which was initially introduced at the rate of 4%, the VAT had a much higher initial rate (10%) and a broader application.⁴ In fact, the initially proposed VAT rate was set at 12% and was intended to apply

¹ RC Williams, *Revenue*, in 22(2) THE LAW OF SOUTH AFRICA 1, 62 (2d ed. 2012); 3 DELOITTE, VAT HANDBOOK (Mark Silver & Chris Beneke eds., 7th ed. 2009).

² SHANE FERGUSON AND RICHARD ROBERT R. RUBIN, HANDY GUIDE TO VAT 1 (1991).

³ BRIAN GOODALL & RONALD KING, TAX AND INVESTMENTS EASIGUIDE 2005/2006 101 (2005).

⁴ DELOITTE, *supra* note 1, at 3.

to a broad range of goods and services.⁵ However, owing to wide opposition to the rate proposed for the VAT, the government rolled back its initial plans by setting the VAT rate at 10% and temporarily increasing the list of zero-rated basic food items at the initial rollout.⁶ Later, in 1993, the government increased the VAT to its current rate of 14%, while, at the same time, making the list of zero-rated food items permanent.⁷ Nonetheless, the VAT still has a much broader application than did the GST.⁸

In addition, while both intended to be a tax on consumption, the replacement of the GST by the VAT reportedly has brought about more transparency and accountability by changing the way the applicable tax was collected. Unlike the GST, which was collected once (at the point of transaction of the good or service), the VAT is “collected in installments at each stage in the production distribution chain.”⁹ All vendors dealing in applicable goods or services are required to charge the VAT on such goods and services; they are then entitled to claim the VAT as an input cost if they are not the end user.¹⁰ This gives vendors throughout the distribution line an incentive to report the VAT received by previous vendors, making the whole process much more transparent.¹¹

II. Scope

A. Transactions Subject to VAT

As a general principle, the VAT is applicable to a number of categories of transactions, including

- the supply of goods or services by any vendor;
- the importation of any goods to the country;
- the supply of any imported services by any person; and
- the participation in activities deemed supplying goods or services.¹²

B. Standard-Rated, Zero-Rated, and Exempt Supplies

All supplies of goods fall into one of three categories: standard-rated, zero-rated, or exempt supplies. Standard-rated supplies are supplies of goods or services subject to the standard 14%

⁵ GOODALL & KING, *supra* note 3, at 101.

⁶ DELOITTE, *supra* note 1, at 5.

⁷ Value-Added Tax Act 89 of 1991 § 7, 30 BUTTERWORTHS STATUTES OF SOUTH AFRICA (updated through 2013); GOODALL & KING, *supra* note 3, at 101.

⁸ DELOITTE, *supra* note 1, at 4.

⁹ Williams, *supra* note 1, at 62; GOODALL & KING, *supra* note 3, at 101.

¹⁰ GOODALL & KING, *supra* note 3, at 101.

¹¹ *Id.*

¹² Value-Added Tax Act §§ 7 & 8.

rate of the VAT unless they fall into the category of zero-rated or exempt supplies.¹³ Zero-rated supplies are taxable supplies on which the VAT is levied at 0%.¹⁴ Exempt supplies are supplies of goods or services exempt from tax either at standard-rate or zero-rate.¹⁵

III. Treatment of Financial Services

A. Definition

For the purpose of the Value-Added Tax Act, the following activities are considered financial services:

- a) The exchange of currency [however affected];
- b) the issue, payment, collection of transfer of ownership of a check or letter of credit;
- c) the issue, allotment, drawing acceptance, endorsement or transfer of ownership of a debt security;
- d) the issue, allotment or transfer of ownership of an equity security or a participatory security;
- ...
- f) the provision by any person of credit under an agreement by which money or money's worth is provided by that person to another person who agrees to pay in the future a sum or sums exceeding in the aggregate the amount of such money or money's worth;
- ...
- i) the provision, or transfer of ownership, of a long-term insurance policy or the provision of reinsurance in respect of any such policy: Provided that such an activity shall not be deemed to be a financial service to the extent that it includes the management of a superannuation scheme;
- j) the provision, or transfer of ownership, of an interest in a superannuation scheme;
- k) the buying or selling of any derivative or the granting of an option: Provided that where a supply of an 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 financial service as contemplated in this paragraph;
- ...

Provided that the activities contemplated in paragraphs (a), (b), (c), (d) and (f) shall not be deemed to be financial services to the extent that the consideration payable in respect

¹³ DELOITTE, *supra* note 1, at 16; Value-Added Tax Act § 7.

¹⁴ Value-Added Tax Act § 11.

¹⁵ *Id.* §§ 1 & 12.

thereof is any fee, commission, merchant's discount or similar charge, excluding any discounting cost.¹⁶

Financial service does not include the following:

- a) the cession, assignment, transfer or other supply of any right to receive payment in relation to any taxable supply where, as a result of any such cession, assignment, transfer or supply, output tax in relation to that taxable supply would not be or become attributable to any tax period . . . ; or
- . . .
- c) the transfer of any interest in or right to be paid money that is, or is to be, owing by a share block company under its loan obligation . . . to any person who is or will be a shareholder of such share block company.¹⁷

B. Tax Treatment

The Value Added Tax Act provides that the supply of any financial services is exempt from the VAT.¹⁸ However, this does not apply to financial services that would otherwise be zero-rated.¹⁹ A financial service provided to a nonresident (for instance, life insurance for a passenger on an international flight or the sale of shares to a nonresident) falls into the category of a zero-rated supply.²⁰

It also does not apply to any fees, commissions, merchant's discount, and similar charges that relate to financial services as they are subject to VAT.²¹ For instance, while the exchange of currency is exempt, any fee charged for the exchange service is a standard-rated supply because the fees due in consideration for the service are not considered part of the financial service.²²

¹⁶ Value-Added Tax Act § 2(1).

¹⁷ *Id.* § 2(4).

¹⁸ *Id.* § 12.

¹⁹ *Id.*

²⁰ SOUTH AFRICAN REVENUE SERVICES (SAR), VAT 404 – VALUE-ADDED TAX: GUIDE FOR VENDORS 41 (undated), <http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-VAT-G02%20-%20VAT%20404%20Guide%20for%20Vendors%20-%20External%20Guide.pdf> (last visited July 23, 2014); DELOITTE, *supra* note 1, at 112.

²¹ SAR, *supra* note 20.

²² *Id.*; Value-Added Tax Act § 2(1).