



SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO: 38

DATE: 30 January 2007

ACT : INCOME TAX ACT, 1962 (the Act)

SECTION : SECTION 76F

SUBJECT : APPLICATION AND COST RECOVERY FEES FOR BINDING PRIVATE RULINGS

1. Purpose

This Interpretation Note sets forth the application and cost recovery fees prescribed by the Commissioner for the South African Revenue Service (the Commissioner) for the issuance of binding private rulings.

2. Background

Section 76F(1) requires the Commissioner to prescribe application and cost recovery fees for binding private rulings in order to defray the cost of the advance tax rulings system.

3. Application fee

In accordance with section 76F(1)(a), the Commissioner has prescribed the following application fees:

- Small, medium and micro enterprises (SMME)¹ – R2 500
- All other taxpayers – R10 000

¹ For purposes of this reduced fee, an SMME is defined as any –

- natural person (including the deceased or insolvent estate of a natural person); or
- unlisted company; or
- trust (provided that all of the members of that trust are natural persons); or
- for purposes of VAT applications only, a partnership,

whose total gross income for the most recent year of assessment from carrying on business did not exceed R10 million. If a person carried on business for a period of less than twelve months during the last year of assessment, the amount of R10 million must be adjusted proportionately. For purposes of this calculation, a part of a month must be treated as a full month business for a period of less than twelve months during the last year of assessment, the amount of R10 million must be adjusted proportionately.

4. Cost recovery fee

4.1 General

The cost recovery fee consists of two components. The first is an hourly charge for time spent by the tax specialist(s) during the rulings process. This component is based upon weighted average hourly rates which vary in accordance with the complexity of the application. These rates are set forth in paragraph 4.2. The cost recovery fee will be limited to time spent by the tax specialists directly in connection with an application.

The second component consists of the direct costs, if any, incurred in connection with an application. Direct costs may include travel costs or the costs incurred in obtaining the services of a consultant or expert when necessary to advise upon the technical aspects of a proposed transaction. Direct costs may not be incurred without the prior approval of the applicant. This approval must be in writing and must be included in either the original Letter of Engagement or in an amendment to it.

The amount of the cost recovery fee depends upon several factors. These typically include the number and complexity of the issues raised, the complexity of the proposed transaction itself, and the volume of agreements, documents and other information that must be reviewed in connection with the application.

4.2 Fee schedule

In order to provide greater certainty and guidance to potential applicants, the Commissioner has established the following fee structure –

Category	Estimated Fee	Hourly Rate	Estimated Time To Complete ²
Standard	R5 000 to R25 000	R400	20
Involved	R25 000 to R50 000	R450	45
Complex	R50 000 to R75 000	R500	60
Extraordinary	Case-by-case	R500	Case-by-case

The categories are based upon the complexity of the proposed transaction and/or specific issues presented by an application.

² Business days calculated from the date of the completed application which includes submission of all information as stipulated in section 76E of the Act. Business days exclude days SARS has to wait for information or feedback from the applicant. Completion times are estimates and may vary depending upon various factors, including the potential revenue implications raised by the application and the potential impact of the ruling on other taxpayers. If it appears that these times may be exceeded, the applicant will be notified in advance.

Regardless of the category, applicants are only charged for the time actually spent on an application. Thus, for example, if an involved application requires only ten hours to complete, the cost recovery fee would be R4 500. A breakdown of fees charged will only be provided, upon request, in extraordinary cases and solely in the discretion of the Commissioner.

SMMEs will not be charged for the first eight hours of time spent on their applications.

4.3 Notification and acceptance

Applicants will be notified of the categorisation of their applications and the estimated fee range following the submission of their supporting information and other required submissions. This notice will be provided in all cases.

Applicants must accept the estimated fee within 15 business days. Failure to do so will result in the rejection of the application without refund of the application fee.

4.4 Request for reconsideration

If an applicant disagrees with the categorisation of an application, the applicant may request that it be reconsidered. This request must be made to the tax specialist assigned to the application. The final determination of the categorisation and estimated fee range lies solely within the Commissioner's discretion.

5. Advance payment

Applicants are required to pay 20% of the maximum estimated fee in advance. This advance payment must be made when the estimated fee is accepted. Failure to do so will result in the rejection of the application without refund of the application fee.

6. Limits on revised fees

The maximum amount of the applicable fee range may not be exceeded unless –

- a) the applicant amends the application; or
- b) a new issue arises or is identified during the rulings process.

In the event that a revised estimated fee is necessary in either of these situations, the applicant will be notified and given an opportunity to discuss the revised estimate.

If an applicant fails or refuses to accept a revised estimated fee, the application may be rejected without any refund, waiver or abatement of any fees paid or incurred to that point.

7. Additional information

Additional information regarding the application and cost recovery fees may be found in the *SARS Guide to Binding Private Rulings* available on the SARS website (www.sars.gov.za). Specific queries may also be submitted to atinfo@sars.gov.za.

SECTION 76P STATEMENT

This written statement is a binding general ruling issued in accordance with section 76P of the Act.

The provisions of the Act that are the subject of this binding general ruling are the provisions of section 76F.

This binding general ruling is effective until formally withdrawn or amended.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE