

# Guide to Advance Tax Rulings

Issue 2



## Tax Administration

# Guide to Advance Tax Rulings

## Preface

This guide provides –

- guidance in respect of the application for an advance ruling; and
- an overview of the Advance Tax Ruling (ATR) process.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It does not consider the technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference. It is also not a binding general ruling under section 89 of that Act.

For more information, assistance, and guidance you may contact the ATR unit by sending an e-mail to **ATRinfo@sars.gov.za**.

Comments on this guide may be e-mailed to **policycomments@sars.gov.za**, or queries relating to an advance tax ruling may be e-mailed to **ATRinfo@sars.gov.za**.

Leveraged Legal Products  
**SOUTH AFRICAN REVENUE SERVICE**  
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## Glossary

In this Guide, unless the context indicates otherwise –

- “**Advance ruling**” means a BCR, a BGR or a BPR (see **2**);
- “**Applicant**” means an applicant as defined in **3.1**;
- “**ATR**” means advance tax rulings;
- “**ATR system**” means the system used to apply for a ruling application, which is accessible through the SARS eFiling system;
- “**BCR**” means a “binding class ruling” as defined in **2.2**;
- “**BGR**” means a “binding general ruling” as defined in **2**;
- “**BPR**” means a “binding private ruling” as defined in **2.1**;
- “**business day**” means a “business day” as defined in **7**;
- “**eFiler**” means the person performing the activities under his or her e-Filing profile on the ATR system in relation to the application (see **Step 2**);
- “**section**” means a section of the TA Act; and
- “**TA Act**” means the Tax Administration Act 28 of 2011.

All guides, interpretation notes and public notices referred to in this guide are the latest versions, unless indicated otherwise, available on the SARS website at [www.sars.gov.za](http://www.sars.gov.za) or via eFiling at [www.sarsefiling.co.za](http://www.sarsefiling.co.za) (guides only).

## 1. Introduction

The purpose of the advance ruling system is to promote clarity, consistency and certainty regarding the interpretation and application of a tax Act<sup>1</sup> administered by the Commissioner.

## 2. Advance rulings

An advance ruling refers to a BCR, BGR or BPR, which is binding on SARS.

### 2.1 Binding private rulings

A BPR is a written statement issued by SARS regarding the application of a tax Act to one or more parties to a proposed transaction, in respect of that transaction.

An application for a BPR may be made by a person who is a party to the proposed transaction, or by two or more parties to the proposed transaction, as co-applicants. Co-applicants must designate one of the co-applicants to take the lead and be the 'applicant' that represents the others.

### 2.2 Binding class rulings

A BCR is a written statement issued by SARS regarding the application of a tax Act to a specific class of persons in respect of a proposed transaction.

An application for a BCR may be made by a person (the applicant) on behalf of a class. A "class" is defined in section 75 as –

- “(a) shareholder, members, beneficiaries or the like in respect of a company, association, pension fund, trust, or the like; or
- (b) a group of persons, that may be unrelated and —
  - (i) are similarly affected by the application of a tax Act to a 'proposed transaction'; and
  - (ii) agree to be represented by an 'applicant';”

For example, employers, directors and trustees may apply (respectively) for a ruling relating to their employees, the company's shareholders or the trust's beneficiaries under paragraph (a) of the definition of a 'class'. Paragraph (a) does not, for example, refer to any shareholder in respect of any company. Investors, who hold various shares, do not constitute a class, unless the shares are of the same class in the same company.

The individual class members, under paragraph (a), do not have to exist, or be identified, at the time of the application because the application is made on behalf of a class and the shareholders, members, beneficiaries or the like are not required to agree to be represented in order to constitute a class member.

Paragraph (b) of the definition of a "class" contemplates a group of unrelated persons that are similarly affected by the application of a tax Act. These persons must agree to be represented by the applicant.

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<sup>1</sup> Means the TA Act or an Act, or portion of an Act, referred to in section 4 of the South African Revenue Service Act 34 of 1997, excluding the Customs and Excise Act.

## 2.3 Binding general rulings

A BGR is a written statement issued by SARS under section 89 of the TA Act regarding the interpretation of a tax Act or the application of a tax Act to stated facts and circumstances. Binding general rulings generally cover topics of general interest. A BGR is issued because of a need identified by SARS and, unlike BCRs and BPRs, is not issued pursuant to a ruling application submitted to the ATR unit. Binding general rulings are not considered in this guide and, accordingly, any further reference in this guide to an 'advance ruling' will be to a BCR or BPR.

## 3. Requirements of an advance ruling

The following is required for an advance ruling:

- An applicant
- A proposed transaction
- A tax compliant applicant
- A tax matter that is suitable for an advance ruling
- Application documents

### 3.1 An applicant

An "applicant" is defined in section 75 as a person that submits an application for a BPR or BCR. More than one applicant may participate in the application, whereby at least one will be the lead applicant (referred to as the "applicant") representing the other applicants (referred to as the "co-applicants").<sup>2</sup>

Any natural person or legal entity that intends to be a party to a proposed transaction may apply for an advance ruling. A representative, such as a lawyer, accountant or tax practitioner may submit an application on behalf of an applicant.<sup>3</sup>

#### 3.1.1 Person

A "person" is not defined in the TA Act, but includes, for example, a natural person or a company.

A partnership is not eligible to apply for an advance ruling relating to income tax but may apply for an advance ruling relating to value-added tax. This is on the basis that a partnership is included in the definition of a "person" in section 1(1) of the Value-Added Tax Act 89 of 1991.<sup>4</sup>

Nothing precludes partners from applying for a ruling in their capacities as partners, designating, for example, their managing partner as the lead applicant. The individual partners of a partnership will constitute a "class" as defined and are permitted to apply for a BCR. Alternatively, smaller partnerships may want to apply for a BPR, where one partner is the applicant and the others are co-applicants.

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<sup>2</sup> See sections 79(2) and 81(4) that contemplate instances where there is more than one applicant.

<sup>3</sup> A Power of Attorney is required to represent an applicant.

<sup>4</sup> *Government Gazette 36119* dated 8 February 2013.

### 3.1.2 Legal status of the applicant

In general, a person must exist before applying for an advance ruling. However, there may be limited circumstances in which a person effectively has the legal ability to act before they come into existence.

For example, a company is a juristic person and has juristic personality as from the date and time that its incorporation is registered. However, section 21(1) of the Companies Act 71 of 2008 permits a person to purport to act in the name of, or on behalf of, an entity that is contemplated to be incorporated, but does not yet exist at the time of, for example, the application. Therefore, it may happen that an applicant is a company that still must be formed. SARS will, in such instances, consider the likelihood of incorporation and the subsequent ratification of the purported action, during the application phase.

Applicants are encouraged to engage with the ATR unit, at [ATRinfo@sars.gov.za](mailto:ATRinfo@sars.gov.za), before submitting an application if there is uncertainty whether the legal status of the applicant may result in the application being rejected.

### 3.2 Proposed transaction

The proposed transaction requirement enables an applicant to have tax certainty before the transaction becomes binding. Advance rulings are therefore only considered in respect of proposed transactions.

A “proposed transaction” is defined in section 75 as –

“a ‘transaction’ that an ‘applicant’ proposes to undertake, but has not agreed to undertake, other than by way of an agreement that is subject to a suspensive condition or is otherwise not binding”.

A “transaction” means any transaction, deal, business, arrangement, operation or scheme, and includes a series of transactions.

A transaction is considered proposed if, for example, it is seriously contemplated although not yet entered into; or if the underlying agreement has been entered into but is subject to a suspensive condition. A transaction remains proposed until the condition is complied with.

It is often assumed that the implementation of a proposed transaction, before a ruling is issued, will be problematic. This is not necessarily the case as the ATR unit will accept an application (or continue with an application) even if the transaction will be implemented before the ruling is issued. However, the transaction must be proposed at the time the application is made and there must be sufficient time available for the ATR unit to perform the work before the implementation. The proposed implementation date should preferably be at least 45 business days after the date the application is expected to enter the case-in-progress phase.<sup>5</sup> This will provide the ATR unit with sufficient time to engage with the matter and raise any glaring issues. The applicant will have the benefit of a ruling before being bound by the transaction if the application is submitted timeously.

Any concerns relating to the proposed transaction requirement can be clarified with the ATR unit before making an application. The enquiry can be directed to [ATRinfo@sars.gov.za](mailto:ATRinfo@sars.gov.za).

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<sup>5</sup> See 4.1 (Step 7). The application will only enter the ‘case-in progress’ phase once the estimate has been accepted and SARS has received the deposit and the signed Letter of Engagement.



### **3.3 Tax compliant applicants**

#### **3.3.1 Tax status**

The applicant and co-applicants must be tax compliant at the time of applying for a ruling. Both the applicant and co-applicants must be up to date with all their tax returns and tax payments. An arrangement made with SARS for the payment of any outstanding taxes or submission of outstanding returns will be accepted.<sup>6</sup>

#### **3.3.2 Compliant with the advance tax ruling process**

The ATR unit may, at any stage during the ruling process, request further information from the applicant. If the applicant fails or refuses to provide the information, SARS may reject the application without a refund or a reduction of fees.<sup>7</sup>

Applicants that attempt in good faith to comply with the requirements for applications, or further requests, need not be overly concerned at the prospect of an inadvertent failure to comply properly, because SARS will, under these circumstances, afford an applicant the opportunity to rectify any defects or shortcomings.

### **3.4 Suitable subject matter**

Although the advance ruling system provides clarity and certainty regarding the interpretation and application of a tax Act in respect of a proposed transaction, not all matters are suitable for an advance ruling.

Section 80(1)(a) to (f) provides for several instances in which SARS may reject an application. The Commissioner may also publish a list of additional considerations in respect of which SARS may reject an application.<sup>8</sup> The latter is loosely referred to as the “No-Rulings List”,<sup>9</sup> which is updated by the Commissioner by public notice as and when the need arises.

The ATR unit will engage with the applicant and provide reasons if it proposes to reject an application.

This part of the guide will briefly discuss some of the instances that arise regularly in which SARS generally reject applications:

#### **3.4.1 Market value**

The nature of an advance ruling is such that it involves the interpretation and application of a tax Act. The market value of an asset is a matter of fact, not law, therefore an application that requires a determination of the market value of an asset or a view on its accuracy will generally be rejected. The market value of an asset is usually determined by establishing the price that may be obtained by a willing seller from a willing and able buyer in an open market or at arm's length.

An applicant that is of the opinion that SARS may be persuaded that the ruling sought raises a question of law and not of fact, is free to approach and address the ATR unit in this regard before submitting the application online.

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<sup>6</sup> This requirement is recorded in SARS's 'No-Rulings List' published under the provisions of section 80(2).

<sup>7</sup> Section 80(3).

<sup>8</sup> See section 80(2).

<sup>9</sup> *Government Gazette 51526* dated 26 November 2024.

### **3.4.2 Pricing of goods or services**

An application may be rejected if it requires the rendering of an opinion or conclusion or the determination of the pricing of goods or services supplied by or rendered to a “connected person” or “associated enterprise”, as defined in section 31 of the Income Tax Act 58 of 1962, in relation to the applicant or a class member. It typically requires economic expertise and is opinion-based, rather than a legal determination. An application that requires such an opinion, conclusion or determination will therefore invariably be rejected.

### **3.4.3 Laws of a foreign country**

The statutory mandate of SARS for an advance ruling is the interpretation and application of South African law, that is a tax Act.

However, it may become necessary for SARS to consider foreign law in order to give effect to domestic tax laws. For example, resident taxpayers may invest in assets abroad and the ownership of such assets (and questions around disposals) may be affected by the laws of that foreign country.

SARS will, if possible, consider the applicable foreign rules and principles, either by consulting authoritative sources or by requiring expert legal opinion in complex cases. SARS may, for example, require the applicant to provide confirmation from the foreign revenue authority that an amount in question is treated as a dividend in that jurisdiction. This is on the basis that domestic law may require that such an amount must be treated as a dividend in that foreign jurisdiction for it to fall within the ambit of the domestic tax provision.

The costs of engaging the expert will be for the applicant’s account but will not be incurred without the applicant’s consent.

### **3.4.4 Hypothetical, not seriously considered, or academic transactions**

Hypothetical scenarios, transactions not seriously contemplated, and academic questions are specifically provided for in section 80(1)(a)(v) and (viii) and may be rejected.

An advance ruling is based on facts provided by the applicant, that is, the facts of a proposed transaction that the applicant is seriously considering entering. Transactions that are in the developmental stages are generally rejected if the facts, on which the ruling must be made are not readily available or seriously contemplated.

### **3.4.5 Alternative courses of action**

An application may be rejected if the applicant has provided different transaction alternatives which are not seriously contemplated.<sup>10</sup>

The application will not be rejected if the applicant envisages alternative courses of action that will not have a material impact on the ruling requested. For example, a trust that proposes to sell shares it holds for the benefit of the members of an employee share scheme may have decided to sell the shares but may not have decided how to structure the sale or to whom the shares would be sold. In such case the applicant would have to indicate, firstly, that a decision has been made to sell the shares; secondly, that alternative ways of selling are still being considered, and thirdly, that none of the alternatives affect the subject-matter of the ruling requested.

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<sup>10</sup> Section 80(1)(b)(ii).

Alternative interpretations of law, by the applicant, on the same set of facts are permitted, but not an alternate set of facts. For example, an applicant may argue that an amount is not a donation, but if SARS finds that it is, the applicant may argue that a specific exemption applies. Such an approach is acceptable.

### **3.4.6 Subject to audit or dispute resolution**

An application may be rejected if it contains an issue that is the same, or substantially similar, to an issue that is currently before SARS in an audit, investigation or other proceeding in respect of the applicant or class member (or person connected to that applicant or class member).

An application may be rejected if it contains an issue that is subject to dispute resolution under Chapter 9 of the TA Act.<sup>11</sup> SARS will not indiscriminately reject an application. The issue in dispute must directly or indirectly affect the application. The facts and circumstances of each application will be considered before it is accepted or rejected.

### **3.4.7 Draft legislation**

Advance rulings are issued in respect of enacted legislation and SARS may, therefore, reject an application relating to draft legislation not yet enacted. Applications relating to legislation that has been enacted, but which is not in force yet, may be considered.

SARS may accept an application that is based on the current wording of a tax Act, even though draft legislation is proposed. However, the ruling (if issued) may have limited application in that it may become void if the proposed legislation is enacted, which could significantly affect the tax consequences of the transaction.

### **3.4.8 Tax avoidance**

SARS may reject an application that involves the application or interpretation of an anti-avoidance provision or doctrine. SARS may reject the application for this reason from the outset or at any stage during the ruling process.

The application of anti-avoidance provisions and doctrines can be fact-intensive, and the analysis of the transaction can often not be undertaken in advance. Possible tax avoidance is best judged after the fact, when all the facts and circumstances are available and verifiable.

SARS will reject an application if there are serious concerns, and it is expected that the anti-avoidance provision will apply to the transaction.

### **3.4.9 Issues of a factual nature**

An application that involves issues of a factual nature may be rejected. This would typically arise when it is not possible to make important factual determinations, because the circumstances are such that the facts are not readily available or ascertainable.

Examples of matters that are generally too factual are instances in which the ATR unit is required to determine whether a company has a business establishment or permanent establishment in a specific location or where its place of effective management is located.

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<sup>11</sup> Under the provisions of section 80(1)(b)(iii)(cc).

### **3.5 Documents required for an application**

The applicant must provide all the necessary information to enable the ATR unit to consider and issue a ruling. The ATR unit will engage with the applicant if information is missing and afford the applicant an opportunity to remedy any shortcomings.

The applicant must prepare and upload the following documents (4.1):

- The application document (3.5.1)
- Supporting information (3.5.2)
- A Power of Attorney (if required) (3.5.3)

#### **3.5.1 The application document**

The application document, which the applicant must prepare and upload, has to contain confirmations, statements, and certain consents, as required by section 79(4)(a) to (o). The applicant should take note of the requirements listed in this section and ensure that they are specifically addressed in the application document. The document must, for example, include a tax technical discussion on the applicable sections together with a draft version of the ruling that the applicant requires.<sup>12</sup>

The applicant is required to engage thoroughly with the relevant legislation, which means the applicant must –

- identify the statutory provision;
- analyse and discuss the relevant provision in detail, that is, consider and deal with each requirement noted in the provision;
- consider relevant authority, commentary or material;
- apply the principles of statutory interpretation; and
- apply the law to the facts.

The analysis of the relevant authority must not be limited to those supporting the applicant's argument.

#### **3.5.2 Supporting documents**

It is advisable to submit any supporting documents that will aid the applicant's arguments, demonstrate the issues and/or confirm the facts, such as schematics, process flows, organograms and diagrams, agreements, and legal opinions.

#### **3.5.3 Power of attorney**

SARS will not engage with any person other than the applicant, unless such person is duly authorised to represent the applicant in the application.<sup>13</sup> A representative must obtain a Power of Attorney from the applicant and co-applicant(s), which must be submitted to SARS together with the application documents.

The Power of Attorney must be specific in its scope and empower the representative to attend to the application on the applicant's behalf. A Power of Attorney that authorises a representative to deal with an applicant's tax matters in general will not suffice.

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<sup>12</sup> Section 79(4)(i) and (f).

<sup>13</sup> Chapter 6 of the TA Act deals with the secrecy of information and confidentiality that SARS officials are bound by.

The applicant should also consider that the representative may have employees, subordinates or colleagues that will participate in the process. The Power of Attorney should be phrased in such a way as to include such employees, subordinates, and colleagues in the Power of Attorney (if applicable).

See **Annexure D** for a template of the Power of Attorney.

## **4. ATR process outline**

The ATR process involves three major phases, being the online application, evaluation and finalisation phases.

### **4.1 Phase I – Online application**

An application must be submitted online on the ATR system. The person submitting the application can refer to the *ATR System Quick Reference Guide* on the **SARS website** for guidance on how to register on the ATR system before applying for an advance ruling as well as the actions that will be required from the applicant during the ruling process.

The online application steps are as follows:

#### **Step 1 – Prepare documents**

Prepare the following documents before submitting the ruling request online:

- The application document (**3.5.1**)
- Supporting documents (**3.5.2**)
- Power of Attorney (**3.5.3**)

The ATR system has a file size limit of 10MB per document. Multiple documents of 10MB or fewer may be uploaded to the ATR system.

#### **Step 2 – Access the advance tax ruling system<sup>14</sup>**

The person facilitating the application on behalf of the applicant and performing all the activities in relation to the application on the ATR system (the eFiler), must be registered for the ATR service on eFiling before an application can be created on the ATR system. See the *ATR System Quick Reference Guide* for detailed steps.

The eFiler could be the applicant, its representative or an employee of the applicant or the representative. The eFiler will be required to perform specific actions on the ATR system during the ruling process. All system-generated notifications will be sent to the eFiler's e-mail address. These notifications will inform the eFiler of any status changes or if any specific actions are required on the ATR system.

Only the eFiler's profile that was used to apply for the ruling will be able to access the application and perform the specific actions required to finalise the application. Special care should be taken in this regard as SARS is unable to retrieve and share the password of the eFiler or transfer the application to another person's profile in the event of, for example, staff turnover at the applicant or its representative.

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<sup>14</sup> See **1** and **2** in the *ATR System Quick Reference Guide* for high level guidance.

### **Step 3 – Completing the required fields online and submitting the application<sup>15</sup>**

The questions on the first screen of the online application page must be completed and the Terms and Conditions must be accepted before the required fields on the pages that follow can be populated.

Basic information such as applicant details and contact information will be required.

The ATR system automatically saves the application. It should be noted that a saved application is only viewable on the applicant's side of the system and will only be viewable and accessible on ATR's side once it has been submitted.

Applications submitted are automatically assigned a unique 10-digit reference number by the ATR system, which must be used in all communications in connection with the application submitted.

### **Step 4 – Uploading supporting documents<sup>16</sup>**

After submission of the application, the 'Upload Documents' feature will become available and all the required documents must be uploaded (**3.5** and **4.1** Step 1). The ATR unit is unable to evaluate the application until these documents have been uploaded.

### **Step 5 – Initial screening**

The ATR unit will consider whether the application is suitable for an advance ruling. Aspects such as the proposed transaction requirement, tax compliance, and section 80 will be considered.<sup>17</sup>

The ATR unit will inform the applicant if any additional information or clarification is required to consider the suitability of the application.

The ATR unit will advise the applicant whether the application is suitable for an advance ruling. If the application is suitable, the process will move to Step 6, during which step the applicant will be advised how to effect payment.

It should be noted that even though the application may be accepted at this stage, it may still be rejected during the ruling process. For example, if the applicant becomes non-compliant, the transaction turns out not to be proposed, or tax avoidance concerns arise that were not foreseen during the initial application process.

### **Step 6 – Payment<sup>18</sup>**

The application fee (**6.1**) must be paid once the applicant is informed that the application will be accepted. The application fee can only be paid by EFT. Payments cannot be made on the ATR system. The ATR unit will advise the applicant of the payment process via e-mail.

The application will automatically expire on the ATR system if the application fee has not been received within 10 business days from the submission of the application on the ATR system. Once the period has lapsed, the ATR unit will not be able to view or retrieve the application. The application will only be viewable on the eFiler's profile. A new application should be

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<sup>15</sup> See **3, 4** and **5** in the *ATR System Quick Reference Guide* for high level guidance.

<sup>16</sup> See **6** in the *ATR System Quick Reference Guide* for high level guidance.

<sup>17</sup> See **3.3**.

<sup>18</sup> See **7** in the *ATR System Quick Reference Guide* for high level guidance.

submitted on the ATR system if the applicant would like to continue (that is, start at Step 1 again).

Applicants are advised to not resubmit the original (expired) application. A new reference number will be assigned to the new application by the ATR system.

### **Step 7 – Fee estimation and classification**<sup>19</sup>

After receipt of the application fee, the application will be allocated to an ATR team member who will broadly consider the application to estimate the level of complexity, which in turn will impact the determination of the estimated fee range for the application's cost recovery fee and expected timeframe for completion (**6.3** and **7**).

The estimated cost recovery fee will be published on eFiling within five business days after receipt of the application fee.<sup>20</sup> At the same time a Letter of Engagement, which is based on the estimated cost recovery fee range, will automatically be generated on the ATR system.

The applicant has 15 business days from the date the estimate is published, to consider and accept the estimate. Acceptance of the estimate by implication means acceptance of the proposed category, cost, and timeframe of the ruling. Applicants may engage with the ATR team member during this time if there are any questions regarding the contents of the Letter of Engagement to obtain clarity or motivate for a reduced estimation. Before the estimate can be accepted, the applicant must indicate that having read and signed the letter of engagement. These steps can only be completed on the ATR system.

By accepting the estimate, the applicant agrees to the fee range and is required to pay a deposit amounting to 20% of the higher amount of the estimated fee range by EFT. This deposit is referred to as an 'estimation fee' on the ATR system.

The applicant must upload the signed Letter of Engagement on the ATR system or e-mail it to **ATRinfo@sars.gov.za**.

This is the final step of the online application phase before the evaluation phase begins. The application will only enter the evaluation phase once the estimate has been accepted on eFiling and SARS has received the deposit and the signed Letter of Engagement.<sup>21</sup> The application moves to the evaluation phase at this stage, and its status will change to 'case-in-progress' on eFiling.

## **4.2 Phase II – Evaluation**<sup>22</sup>

The ATR team member and Manager, assigned to the application, will commence with their own independent research.

The internal evaluation process is comprehensive and collaborative. Peer review and consultation is a fundamental part of the process. Several individuals review and provide input.

Any issues or questions that may arise regarding the facts, circumstances or arguments will be communicated to the applicant during the process. Interactions are often reiterative as it is not always possible to anticipate all questions that could arise during the process at one point

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<sup>19</sup> See **8** in the *ATR System Quick Reference Guide* for high level guidance.

<sup>20</sup> See **7** for the meaning of a 'business day'.

<sup>21</sup> See **7** which deals with the concept of 'case-in-progress' and the counting of the days in respect of agreed timeframes.

<sup>22</sup> See **9** in the *ATR System Quick Reference Guide* for high level guidance.

in time. However, care is taken to consolidate enquiries and in so doing reduce the frequency of interactions in order not to overburden the applicant or unduly delay the process.

### 4.3 Phase III – Finalisation

#### 4.3.1 Engagement after the evaluation phase

The applicant will be advised of the proposed outcome once the ATR team has concluded all internal processes.

If the proposed ruling will be materially different from the one requested, the applicant will be afforded a reasonable opportunity to consult with the ATR team member and make any additional representations it considers necessary.<sup>23</sup> The ATR unit will consider any such arguments submitted and take a final position, which will be communicated to the applicant.

If the outcome is positive, or the applicant agreed to proceed with the ruling that is materially different, the process will move to the next stage, that is, the draft ruling letter stage. However, the process ends if the applicant withdraws the ruling application.

#### 4.3.2 Draft ruling letter<sup>24</sup>

A draft ruling will be uploaded to the ATR system for the applicant to review.

If the draft ruling does not contain any errors or omissions, the applicant must click the **Accept** button on the ATR system to move to the next stage.

Alternatively, the applicant may provide feedback and comments on the draft ruling by clicking the **Feedback** button on the ATR system. Practically, an applicant can provide the feedback by way of a marked-up PDF document and either upload it on the ATR system under Documents or e-mail it to the ATR team member. The feedback will be considered by the ATR unit and a revised draft ruling will be uploaded for consideration. The applicant will have to review the revised draft ruling and accept it or provide feedback.

The application will only move to the next stage once the draft ruling has been accepted by the applicant.

#### 4.3.3 Sanitised ruling<sup>25</sup>

SARS is, subject to the two exceptions discussed below, required to publish advance rulings for information purposes. Rulings must be published in a form that does not reveal the identity of the applicant or parties to the proposed transaction.

A sanitised version of the ruling will be prepared and uploaded onto the ATR system for consideration and acceptance. Online action from the eFiler will be required.

Similar to the draft ruling process, the applicant will be required to consider the sanitised ruling, and either accept it or provide feedback if there are concerns that the identify may be revealed if the sanitised ruling is published in that form. The applicant must click the **Accept** button on the ATR system to move to the next stage.

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<sup>23</sup> The notice is issued in accordance with section 79(7).

<sup>24</sup> See **10** in the *ATR System Quick Reference Guide* for high level guidance.

<sup>25</sup> See **11** in the *ATR System Quick Reference Guide* for high level guidance.



The applicant can provide feedback by way of a marked-up PDF document and either upload it on the ATR system after selecting the **Feedback** option or e-mail it to the ATR team member. The feedback will be considered by the ATR unit and, if applicable, a revised sanitised ruling will be uploaded for consideration and acceptance. The applicant must review the revised sanitised ruling and accept it to move on to the next stage.

A sanitised version of the ruling will not be published if it is not possible to do so in a form that does not reveal the identity of the applicant or if it is materially similar to a ruling already published.<sup>26</sup> A letter confirming the non-publication will be uploaded instead of a sanitised ruling. The eFiler is required to accept this letter on the ATR system.

Acceptance of the sanitised ruling or the letter confirming non-publication, as appropriate, by the eFiler on the ATR system,<sup>27</sup> will move the process to the next stage, that is, invoicing.

#### **4.3.4 Invoice<sup>28</sup>**

An invoice will be created on the ATR system for the cost recovery fee (**6.3**).

A statement is available on the ATR system as from the 'case-in-progress' stage. The statement will be updated at the invoice stage to include the invoiced amount and the amount due by the applicant after taking into account the deposit (estimation fee – **Step 7**). The applicant must only pay the outstanding balance indicated on the statement and not the amount indicated on the invoice.

The ATR unit will communicate with the applicant and assist with the payment process or any payment enquiries that may arise.

The applicant will only be able to access the ruling letter (**4.3.5**) if the account has been settled in full and has a zero balance. Special care should be taken to pay the exact amount stipulated on the statement (plus any interest that may be due), as any over- or under-payment will prevent the applicant from accessing the ruling letter. Interest, which is levied on long outstanding debt (that is, debt that has not been settled within 30 days) does not reflect on the statement, and the applicant will need to enquire with the ATR unit in the case of late payments.

#### **4.3.5 Ruling letter**

The ruling letter will be prepared based on the latest (accepted) version of the draft ruling letter and will be dated when signed.

The proposed transaction requirement is only relevant when applying for a ruling. The transaction need not be proposed when the ruling letter is issued. An applicant may therefore implement the transaction before the ruling is issued. If the applicant chooses to do this, the applicant assumes all related risks, for example, there is a risk that an unfavourable ruling may result and that the applicant, being contractually bound to the implemented transaction, is unable to change the transaction.

A ruling letter cannot be backdated to a date before the proposed transaction was implemented. This does not mean the ruling does not cover the transaction. The tax certainty provided by the ruling relates to a specific transaction and remains binding on SARS.

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<sup>26</sup> Section 87(2) and section 87(8).

<sup>27</sup> See the *ATR System Quick Reference Guide*.

<sup>28</sup> See **12** and **13** on the *ATR System Quick Reference Guide* for high level guidance.

### 4.3.6 Status checks, extensions, and reconfirmations

Changes in law, facts or circumstances may affect the validity of a ruling and therefore an applicant may want to –

- confirm that the changes in law, facts or circumstances do not affect the existing ruling (status checks);
- extend the validity period of a ruling, issued in respect of once-off transactions, that have not yet been implemented (extensions); or
- reconfirm a ruling issued for multiple years on recurring transactions for a further period (reconfirmations).

It is advisable that the applicant engage with the ATR unit (by e-mailing a request to [ATRinfo@sars.gov.za](mailto:ATRinfo@sars.gov.za)) before submitting such an online application.

The extensions, reconfirmations, or status checks will be in the form of a new application and the applicant will be required to apply formally via the ATR system. The same process, as described for new applications, applies, and the ATR unit will provide the applicant with an estimated fee range and timeframe to perform the work.

Status checks, extensions, and reconfirmation requests should be submitted at least 20 business days before the expiry date of the existing ruling.<sup>29</sup>

## 5. Effect of an advance ruling

### 5.1 General

An advance ruling is binding on SARS if the requirements (5.2) are met. SARS must interpret and apply the relevant tax Act in accordance with the ruling issued in respect of the taxpayer and the transaction covered in the ruling.<sup>30</sup> An advance ruling provides clarity on how SARS will treat a specific transaction on assessment.

An advance ruling or a notice issued under the provisions of section 79(7) does not constitute an “assessment” as defined in section 1 or a “decision” contemplated in section 104(2) and is therefore not subject to objection or appeal.

A taxpayer is free to implement the transaction, and account for the tax, as it sees fit. The taxpayer will have all the normal remedies available to dispute the assessment, if aggrieved by the assessment issued in respect of that transaction.

### 5.2 Requirements

The advance ruling applies to a person only if –

- the provision of the Act under consideration is the subject of the advance ruling;
- the facts and proposed transaction implemented by the applicant and co-applicants (or class members) are the same as those specified in the ruling and fall entirely within the effective period of the ruling;

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<sup>29</sup> The application will only be considered submitted once the estimate has been accepted and the ATR unit has received the deposit and the signed Letter of Engagement.

<sup>30</sup> Section 82(1).

- any assumptions made or conditions imposed by SARS in connection with the validity of the ruling have been satisfied or carried out;<sup>31</sup> and
- the person relying on the ruling is the applicant or co-applicant (in the case of a BPR) or a class member (in the case of a BCR), identified in the ruling.

Section 82(4) imposes a prohibition on the citation of BPRs or BCRs in any proceedings, including any court proceedings, other than a proceeding involving the applicant, co-applicant(s), or a class member(s), as specified in the advance ruling.

### 5.3 Void rulings

An advance ruling may be rendered *void* from the outset, and therefore will not be binding on SARS, if –

- the facts stated in the ruling regarding the proposed transaction are materially different from those of the transaction actually carried out;
- there is fraud, misrepresentation, or non-disclosure of a material fact;<sup>32</sup> or
- any condition or assumption stipulated by SARS is not satisfied or carried out.

A fact is considered material if it would have resulted in a different ruling had SARS been aware of it when the advance ruling was made.

### 5.4 Subsequent changes in law

The repeal or amendment of a provision of a tax Act that was the subject of the ruling, will render that ruling ineffective from the date the repeal or amendment takes effect if it materially affects the ruling.

A ruling also becomes ineffective as from the date of a judgment in which a court overturns or modifies the interpretation of the tax Act on which the ruling is based. The facts and circumstances, and the context in which a judgment is made, are important in assessing the potential impact on an issued advance ruling. The effect of the judgment is suspended, and the ruling remains in force, if that judgment is on appeal or leave to appeal is sought or granted.

In such instances, the ruling ceases to be effective on the relevant dates, even if SARS does not publish a withdrawal notice or modification. If an applicant is uncertain of the impact that a change in law or a judgement may have, the applicant may seek clarity in this regard by requesting the ATR unit to confirm the status of the ruling previously issued to that applicant.<sup>33</sup>

### 5.5 Withdrawal or modification by SARS

An advance ruling may be withdrawn or modified by SARS at any time. However, SARS must give notice of the withdrawal or modification of a published ruling in the manner contemplated in section 86.

SARS must specify the date on which the withdrawal or modification becomes effective, which may not be earlier than the date the decision is delivered to the applicant, unless the requirements for a retrospective withdrawal or modification are met.

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<sup>31</sup> See 8.6 regarding the terms and conditions of an advance ruling.

<sup>32</sup> Section 84(1)(b).

<sup>33</sup> See 4.3.6 (Status checks, extensions, and reconfirmations).

Rulings made in error may be withdrawn or modified with retrospective effect only if –

- the applicant or class member has not yet commenced the proposed transaction or has not yet incurred significant costs in respect of the arrangement;
- a person other than the applicant or class member will suffer a significant tax disadvantage if the ruling is not withdrawn or modified retrospectively while the applicant will suffer comparatively less if the ruling is withdrawn or modified retrospectively; or
- the effect of the ruling will materially erode the South African tax base and it is in the public interest to withdraw or modify retrospectively.

## 6. Fees

There are two categories of fees applicable for advance rulings, namely, a once-off application fee and a cost recovery fee.<sup>34</sup> The applicant is required to make the following payments in respect of these fees during the ATR process:

- A once-off application fee (**6.1**).
- A deposit (in respect of the estimated cost recovery fee; also referred to as an 'estimation fee' on the ATR system, (**6.2**), and
- A final payment of the outstanding balance in respect of the cost recovery fee (**6.3**).

### 6.1 Application fee

The application fee for an advance ruling is R2 500 for individuals and a Small, Medium and Micro Enterprise (SMME) and R14 000 for any other applicant. The ATR unit will contact the applicant to facilitate the EFT payments, as payments cannot be made via eFiling.

A "Small, Medium and Micro Enterprise" is, for purposes of applications for advance rulings, defined in *Government Gazette 44383* dated 1 April 2021 as –

"any person, excluding a listed company, if the gross income for the most recent year of assessment did not exceed the amount prescribed in the definition of 'small business corporation' under section 12E(4)(a)(i) of the Income Tax Act",<sup>35</sup>

and –

"in respect of applications for VAT rulings only, any partnership, where the gross income for the most recent year of assessment did not exceed the amount prescribed in the definition of 'small business corporation' under section 12E(4)(a)(i) of the Income Tax Act".<sup>36</sup>

The application fee is not refundable. It is meant to defray the cost of the ATR unit initially engaging with the applicant and considering whether a matter is suitable for an advance ruling.

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<sup>34</sup> Section 81(1).

<sup>35</sup> Paragraph (a) of the definition.

<sup>36</sup> Paragraph (b) of the definition.

## 6.2 The deposit (estimation fee)<sup>37</sup>

The deposit is paid in respect of the cost recovery fee as contemplated in section 81(1)(b).

A deposit equal to 20% of the higher amount of the estimated cost recovery fee range (6.3), is payable after the application is accepted. If the estimated fee range is, for example, R35 000 to R70 000 then the deposit amount will be R14 000 [R70 000 × 20%].

The amount paid will reflect as a credit on the statement and will be deducted from the amount invoiced, to arrive at the amount due.

## 6.3 Cost recovery fee

The cost recovery fee is based on an hourly rate for the time spent on the ruling but may also include direct costs incurred in relation to the ruling. Direct costs will not be incurred without prior written approval from the applicant.

### *Hourly rate*

Typically, the cost recovery fee is determined with reference to the time estimated to be required for the application to be researched and processed. The estimated fee depends on the complexity of the legal and factual issues identified in the application and the volume of documents and information that must be considered.

The application will be categorised as either ‘Standard’, ‘Involved’, ‘Complex’ or ‘Extraordinary’. Each category has specified timelines and fee ranges. However, all four categories have the same hourly rate, being R650 per hour. The hourly rate will only increase if the applicant requires an ‘Urgent’ ruling, in which case the rate is R1 000 per hour.<sup>38</sup>

An application for an advance ruling will fall into one of the following categories:

Categories	Estimated fee range	Deposit	Hourly rate
Standard	R10 000 to R35 000	R7 000	R650
Involved	R35 000 to R70 000	R14 000	R650
Complex	R70 000 to R105 000	R21 000	R650
Extraordinary	Case-by-case	Case-by-case	R650
Urgent applications	Case-by-case	Case-by-case	R1 000

### *Direct costs*

Direct costs that SARS considers necessary are included in the estimated cost recovery fee. The applicant must give written approval for the incurral of direct costs. It is not always possible to determine, at the outset, whether direct costs are likely to be incurred. SARS will engage with the applicant if such a need arises during the process to obtain prior written approval.

The term “direct costs”, for purposes of applications for advance rulings, may include travel costs or the costs incurred in obtaining the services of a consultant or expert when necessary to advise on the technical aspects of a proposed transaction.<sup>39</sup>

<sup>37</sup> The deposit is referred to as an estimation fee on the ATR system.

<sup>38</sup> See 8.1.

<sup>39</sup> *Government Gazette 44838* dated 1 April 2021.

### *Other*

An invoice will be issued at the end of the ATR process in respect of the hours spent on that application and any applicable direct costs. An SMME will not be charged for the first 15 hours of work.

The invoice will be accompanied by a statement that reflects the amount due by the applicant.

The outstanding amount reflected on the statement is payable within 30 calendar days from the date of the invoice. Interest will be levied at the prescribed rate on any outstanding amount not paid within 30 days. Arrear accounts will be referred for debt collection.

## **7. Timeframes**

SARS will start the evaluation process once the application status has changed to ‘case-in-progress’ on the ATR system. The application status will only change to case-in-progress when the online application phase is complete, the estimation has been accepted, the Letter of Engagement is signed and uploaded, and the deposit received.

The timeframe within which a ruling will be issued is dependent on the category of the ruling – see the table below. The case-in-progress date is significant as it signals the date from which the business days will be counted.

The following timeframes apply:

<b>Categories</b>	<b>Business days to issue a ruling</b>
Standard	20
Involved	45
Complex	60
Extraordinary	Case-by-case
Urgent applications	Case-by-case

A “business day”, for purposes of an advance ruling, excludes weekends and public holidays. In addition, an annual freeze period will be effective in respect of all ATR applications from 16 December to 15 January each year. None of the days during the freeze period, or when an application is on-hold, are considered business days.

Each category (as indicated in the table) is assigned a specific number of business days in which the ruling will be issued. The business days are counted in line with the Interpretation Act 33 of 1957, whereby the first day is not counted, but the last day is, that is, reckoned exclusively of the first day and inclusively of the last day.<sup>40</sup>

Note that although the applicant may observe a status change on the ATR system, for example, from on-hold to case-in-progress, the days are counted in accordance with the Interpretation Act as mentioned above. The status change is merely displayed to inform the applicant of the action taken by SARS in respect of that application.

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<sup>40</sup> See section 4 of the Interpretation Act 33 of 1957.

An application will be placed on-hold each time a request for information is issued and will remain on-hold until the applicant has fully complied with the request. The request can be for information, documents, or legal arguments required by the ATR team member to proceed with the ruling process. It will serve the applicant and the representative well to reply promptly to the request for information and provide complete information. A request for information will not be considered complied with, and the application will not be reinstated, if all the information requested has not been provided.

An application will also, for example, be placed on-hold in the following instances:

- When a notice is issued under section 79(7). The application will remain on-hold until the applicant either withdraws the application or makes further representations to counter the position taken by SARS. Engagements, which require a meeting, will cause the matter to remain on-hold until the meeting has occurred and the applicant proceeds to either withdraw the application or make further representations.
- When an application is re-estimated during the ruling process (**8.2**). The re-estimation process will pause the application process, and the application will be placed on-hold until the re-estimation is complete. That is, the applicant agrees to the amended terms, signs the Letter of Engagement and pays any additional 'deposit' that may be required.
- When the draft ruling and sanitised ruling are uploaded for consideration by the applicant. The application will remain on-hold until the applicant provides the feedback and presses the **Feedback** or **Accept** button on the ATR system.

As regards counting days, the day on which the enquiry is issued is not counted as 'on-hold'. On that day, whether it is at 08:00 or 15:00, the application will be considered 'case-in-progress'. The day the information is received is counted as an 'on-hold' day. The same principle applies to counting the days that lapse while the ATR team member awaits feedback on a draft or sanitised ruling uploaded for feedback or acceptance.

### **Example**

#### *Facts:*

An applicant created the online application on 2 September 2024, paid the application fee on 6 September 2024, and completed the submission process by accepting the estimate, paying the deposit and signing and uploading the Letter of Engagement by 13 September 2024. The ATR team member requested additional information on 17 September 2024 and SARS receives all the information on 20 September 2024.

24 September is a public holiday. The application was classified as 'Involved' and the ATR unit had 45 business days to consider the ruling application. The draft and sanitised rulings were uploaded and accepted on the same day. The ruling was issued on 15 October 2024.

**Result:**

The days on which the application was case-in-progress (green), on-hold (line through), weekends (grey) and public holidays (circled) are indicated in the images below:

September						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	<del>18</del>	<del>19</del>	<del>20</del>	21
22	23	24	25	26	27	28
29	30					

October						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

- Although the matter went ‘case-in-progress’ on 13 September, the business days are counted exclusive of the first day.
- Even though the ‘request for additional information’ was issued on 17 September, the days ‘on-hold’ are counted exclusive of the first day (17 September) and inclusive of the last (20 September) when the information was received.
- Weekends and public holidays are not counted. The application was ‘case-in-progress’ for 18 days;
- It was, therefore, ‘on-hold’ for 3 days and the ruling was issued on day 18 (of the estimated 45 days);
- Although 30 calendar days passed since the application was created, only 18 business days were consumed since the matter went ‘case-in-progress’.

## 8. Miscellaneous

### 8.1 Urgent ruling applications

The ATR unit may accept an application on an urgent basis in special circumstances. This means the application will be fast-tracked and finalised in a shorter timeframe as agreed with the applicant. The following is required if the applicant requests a ruling on an urgent basis:

- The applicant must note the urgency in the application document and during the application phase.
- The reasons for the urgency must be explained in the application document.
- The application must be submitted<sup>41</sup> more than 20 business days before the proposed transaction is implemented.
- The ATR unit must have the available resources, at that time, to attend to the application on an urgent basis.

<sup>41</sup> See 4.1 (Step 7) – The application will only be considered submitted once the estimate has been accepted and the ATR unit has received the deposit and the signed Letter of Engagement.



An applicant that intends applying for an urgent ruling should contact the ATR unit ([ATRinfo@sars.gov.za](mailto:ATRinfo@sars.gov.za)) before submitting the application online, to enquire and confirm if the request qualifies, and whether the ATR unit has the necessary resources available to assist with the application on an urgent basis.

An hourly rate of R1 000 per hour will be applicable to urgent applications.

## 8.2 Re-estimations

The re-estimation of an application refers to an instance in which, during the ATR process, it becomes evident that additional time and budget is required to complete the process.

This will typically occur when the applicant makes changes to the proposed transaction while the ATR unit is working on the matter, when additional rulings are added by the applicant, or it becoming evident that, for whatever reason, the complexity of the application request was underestimated from the outset.

The ATR team member will, in such instances, engage with the applicant and discuss new terms, that is, an amended timeframe and budget. This often means that the application must be reclassified to a higher category, for example, if the application was initially considered as 'Involved' it will be reclassified as 'Complex', etc. A revised Letter of Engagement will be issued once the parties agree to the reclassification.

There may also be instances in which, for whatever reason, the category remains the same, if there is sufficient budget available to complete the process, but additional time is required. Amended timeframes will in these instances be discussed with the applicant and a revised Letter of Engagement will be issued.

In both scenarios the applicant must accept the revised estimation on the ATR system before the process can continue. The ATR team member will inform the applicant if an additional deposit is required.

## 8.3 Communication

The ATR team member assigned to the ruling application will contact the applicant before the evaluation phase.

Communication with the applicant will be through various platforms, that is, the ATR system, e-mails, telephone calls or virtual meetings. The circumstances will dictate the most appropriate platform for communication.

The ATR unit will only communicate with the applicant or its representative. Any person other than the applicant or its authorised employee, will require a Power of Attorney to engage with the ATR unit as a representative.<sup>42</sup>

The applicant may check on the status of the ruling at any time and may engage with the ATR team member or e-mail [ATRinfo@sars.gov.za](mailto:ATRinfo@sars.gov.za) if any questions or concerns arise during the process.

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<sup>42</sup> See 3.5.3.

## **8.4 Withdrawal of a ruling application / parts of the ruling**

An applicant and/or co-applicant can withdraw an application at any stage during the ruling process.<sup>43</sup> A withdrawal does not affect the liability to pay the cost recovery fee.

A question that sometimes arises is whether the applicant can withdraw certain parts (ruling requests) of an application if (i) that issue has since become obsolete; or (ii) a negative outcome is anticipated (and communicated).<sup>44</sup> The answer to this question can only be determined on a case-by-case basis, considering the facts and circumstances.

## **8.5 Unsolicited written statements**

The applicant is required, as part of the application process, to prepare a draft ruling letter to clarify the exact ruling sought. An advance ruling, and by implication a BPR and a BCR, is a written statement regarding the application of a tax Act. SARS is not limited to the wording proposed or the specific rulings requested in the application. SARS may add unsolicited written statements, that the applicant did not request, to the advance ruling.

The purpose of the advance ruling system is to provide clarity, consistency and certainty on the tax implications of a proposed transaction and therefore any relevant and fundamental aspect which SARS considers appropriate will be included in the ruling issued.

## **8.6 Conditions and assumptions**

An advance ruling may contain specific conditions and assumptions, which are specific to the application and are fundamental to the tax position taken in the ruling, and are noted in the first section of the ruling letter.

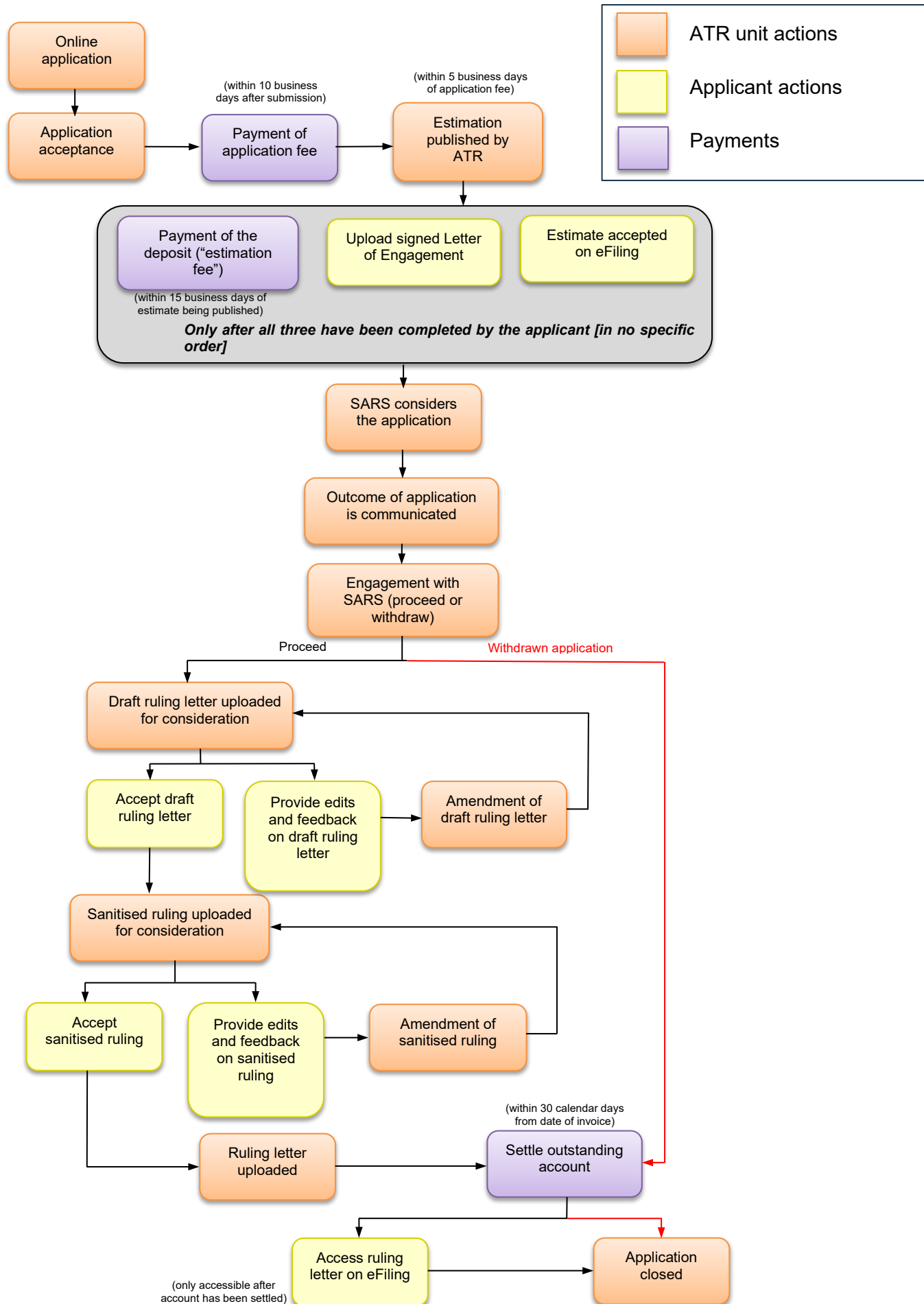
Each ruling letter also contains standard terms and conditions which are applicable to all rulings and recorded in the second part of the ruling letter (See **Annexure B**).

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<sup>43</sup> Section 79(8).

<sup>44</sup> Section 79(7).

## Annexure A – ATR system process flow



## Annexure B – Standard Terms & Conditions

### 1. Standard terms and conditions

#### 1.1 Basis of the ruling(s) given in a letter

The ruling(s) contained in a binding private ruling letter are based on the following:

- 1.1.1 The information, documents, representations, facts considered and assumptions presented being true and accurate.
- 1.1.2 Any legal agreements or contracts entered into (or proposed to be entered into) in connection with the proposed 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.
- 1.1.3 The interpretation and application of tax laws, regulations, binding general rulings, and case law in effect as of the date of this binding private ruling.

#### 1.2 The proposed transaction

This binding private ruling letter and the ruling(s) contained in the letter are based on the South African Revenue Service's (SARS's) understanding of the proposed transaction described in the background.

*The applicant is responsible for notifying SARS immediately if the understanding of the proposed transaction described in this ruling letter is incorrect, inaccurate or incomplete to ensure the ruling remains valid and is not withdrawn or modified.*

#### 1.3 Subsequent changes in tax law

- 1.3.1 This binding private ruling will cease to be effective in any of the following circumstances:
  - (i) The provisions of the tax laws that are the subject of this binding private ruling are repealed or amended.
  - (ii) A court overturns or modifies an interpretation of the provisions of the tax laws on which the rulings are based unless:
    - (aa) The decision is on appeal.
    - (bb) The decision is fact-specific and the general interpretation on which the rulings are based is unaffected.
    - (cc) The references in the decision to the interpretation on which the rulings are based are *obiter dicta*.
- 1.3.2 In any of these circumstances, the ruling will cease to be effective immediately on –
  - (i) the effective date of the repeal or amendment of the provisions in question; or
  - (ii) the date of the reasons for judgment.
- 1.3.3 SARS is not obligated to notify the Applicant, or any Co-Applicant(s) if applicable, or to otherwise publish a notice of withdrawal or modification.

#### 1.4 Circumstances in which this ruling letter will be void

- 1.4.1 This binding private ruling is void *ab initio* if:
  - (i) The proposed transaction is materially different from the transaction actually carried out;
  - (ii) There is fraud, misrepresentation or a non-disclosure of a material fact; or

- (iii) Any condition or assumption prescribed in this binding private ruling is not satisfied or carried out.

1.4.2 A fact is considered material if it would have resulted in a different ruling had SARS been aware of it when issuing this binding private ruling.

## **1.5 Other requirements and limitations**

This binding private ruling letter and the ruling(s) contained therein are also subject to any other requirements and limitations provided for in Chapter 7 of the TA Act, as well as any requirements and limitations provided for in any general binding ruling issued under section 90 of the TA Act.

This binding private ruling letter and the specific ruling(s) contained in the letter only apply to the Applicant and any Co-Applicant(s) identified in the letter. This ruling may not be cited in any proceeding, including court proceedings, other than a proceeding involving the Applicant or any Co-Applicant(s) identified in the letter.

## Annexure C – ATR application document checklist

Applicant Name: \_\_\_\_\_

Representative/Third Party (if applicable) \_\_\_\_\_

- Power of Attorney (if applicable)
- Ruling request [**1.1 of the Example of a ruling application**]
- Disclosure of information: [**Annexure 1 of the Example of a ruling application**]
  - Applicant and Representative contact information;
  - Reasons why the ruling should be granted;
  - Tax compliance status of the applicant and class members (if applicable)
- A letter from the applicant consenting to the publication of the ruling by SARS [**Annexure 2 of the Example of a ruling application**]
- Proposed draft ruling [**Annexure 3 of the Example of a ruling application**]
- Background – complete description of the proposed transaction in respect of which the ruling is sought and setting out the transaction step-by-step [**2.1 and 2.2 of the Example of a ruling application**]
- Interpretation of the relevant statutory provisions or issues affecting the proposed transaction [**3 of the Example of a ruling application**]
- Comprehensive description of the impact the proposed transaction may have on the tax liability of the applicant or co-applicant [**4 of the Example of a ruling application**]
- The applicant’s interpretation of the relevant statutory provisions [**5.1 of the Example of a ruling application**]
- Applicable case law – an analysis of the relevant authorities either considered by the applicant or of which the applicant is aware [**5.2 of the Example of a ruling application**]

**Annexure D – Power of Attorney**

**POWER OF ATTORNEY**

**TO WHOM IT MAY CONCERN**

I, the undersigned,

[person's name]

(Identity number: \_\_\_\_\_)

duly authorised hereto by \_\_\_\_\_ (registration number: \_\_\_\_\_) hereby nominate \_\_\_\_\_ and any employees under his or her supervision and/or any of his or her representatives, jointly and severally with full power of substitution to be the lawful attorneys and agents in the name, place and stead of \_\_\_\_\_ for the exclusive purpose of executing on behalf of \_\_\_\_\_ all the necessary forms, documents, letters and any other paperwork required in order to apply for and obtain an Advance Ruling as contemplated in Chapter 7 of the Tax Administration Act 28 of 2011.

**THIS DONE AND EXECUTED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2025

\_\_\_\_\_  
[name of person]

As witnesses:

\_\_\_\_\_  
[name of witness]

\_\_\_\_\_  
[name of witness]

## Annexure E – Example of a binding ruling application

Applicant Name – ATR reference number - xxxx

Binding ruling application relating to the tax treatment of the proceeds from the disposal of shares

### 1. Introduction

#### 1.1 Ruling request

NOTE: This paragraph should summarise the ruling request.

For example:

On behalf of the applicant we hereby request a binding private ruling relating to the tax treatment of certain proceeds to be received by the applicant from the disposal of shares in a company to be formed ('NewCo').

#### 1.2 Sections of the Act referred to in the application

For example:

The relevant provisions of the Income Tax Act 58 of 1962 ('the Act') referred to in this application are:

- The definition of the term 'gross income' in section 1(1)
- Paragraph 2(1) of the Eighth Schedule to the Act

#### 1.3 Documents

The following supporting documentation is attached:

- **Annexure 1** - Disclosure of required information. This annexure sets out the information required to be submitted in accordance with section 79(4) of the TA Act.
- **Annexure 2** - A letter from the applicant consenting to the publication of the ruling by SARS in terms of section 87(1).
- **Annexure 3** - The proposed draft ruling.

### 2. Factual background

#### 2.1 Background

This section should provide a complete description of the proposed transaction in respect of which the ruling is sought (section 79(4)(c) of the TA Act). This should include as much information as possible about the applicant and the transaction to ensure SARS's understanding of the proposed transaction.

#### 2.2 Detailed description of the transaction

This section should set out the transaction step-by-step.



### 3. Relevant provisions of the Act

This section should indicate the interpretation of the relevant statutory provisions or issues affecting the proposed transaction.

For example:

It is our opinion that the proceeds to be received by the applicant from the disposal of the shares do not fall within the 'gross income' of the applicant and are therefore not subject to income tax in the hands of the trust. Our reasons for this conclusion are set out in detail below.

The relevant portion of the definition of the term 'gross income' in section 1(1) of the Act refers to *'in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident ... during such year ... of assessment, excluding receipts or accruals of a capital nature ...'*

It follows that the amounts in question would be subject to the CGT provisions of the Act. The applicable provision is paragraph 2(1) of the Eighth Schedule to the Act. The relevant portions of that paragraph record that the Eighth Schedule *'applies to the disposal after valuation date of ...any asset of a resident ...'*

### 4. Tax implications

This section should set out a comprehensive description of the impact the proposed transaction may have on the tax liability of the applicant or co-applicant, and where relevant, any connected person in relation to the applicant, including any and all relevant information regarding the financial or tax implication of the proposed transaction.

**Please ensure that all financial information applicable to the proposed transaction is provided and the resulting tax consequences thereof.**

### 5. Application of the law

#### 5.1 General

This section should provide the applicant's interpretation of the relevant statutory provisions or issues. It should therefore briefly provide the rationale for interpreting the specific section/s of the Act on which a ruling is being sought in the manner as requested.

For example:

We believe that the proceeds from the disposal of the shares to investors do not fall within the 'gross income' of the applicant's trust. This is because we believe that these proceeds will be of a capital nature in the hands of the applicant. It is in respect of this conclusion that we seek a binding private ruling. We consider below the relevant case law which provides support for conclusion.

#### 5.2 Applicable case law

This section should provide an analysis of the relevant authorities either considered by the applicant or of which the applicant is aware, whether those authorities support or are contrary to the proposed ruling being sought (section 79(4)(i) of the TA Act). Therefore case law for and against the specific ruling should be given.

## 6. Conclusion

For example:

We request SARS's confirmation that for the reasons outlined above; the proceeds from the disposal from the shares in NewCo would not constitute 'gross income' in the hands of the applicant because they will be receipts of a capital nature. Therefore the proceeds will be subject to paragraph 2(1) of the Eighth Schedule to the Act.

### Annexure 1 – Disclosure of required information

Detailed below is the information required to be submitted in accordance with section 79 of the TA Act

#### a. Applicant

##### **Applicant's postal address and telephone number – section 79(4)(a)**

Applicant name

PO Box xx

Johannesburg

2196

Telephone Number: (011) xxx-xxxx

##### **Applicant's representative's postal address and telephone number – section 79(4)(b)**

Insert representative name

Insert company name

Private Bag X

Johannesburg

2052

Telephone Number: (011) xxx-xxxx

Email address:

#### b. Reasons why the proposed ruling should be granted – section 79(4)(h)

For example:

We submit that the proposed ruling should be granted to enable the applicant to dispose of the shares in NewCo.

#### c. Statement in terms of section 79(4)(i)

For example:

This ruling application has fully considered the relevant statutory provisions and case law and it is considered that this ruling is consistent with such provisions and law.

#### d. Statement in terms of section 79(4)(j)

For example:

To the best of the applicants' knowledge, and, if applicable, the applicants' representative's knowledge, the same or substantially the same issue on which this ruling has been sought is not the subject of an audit examination, investigation, ruling application, objection, appeal, or other proceedings currently before SARS or the courts involving the applicant or any connected person in relation to the applicant.

**e. Statement in terms of section 79(4)(n) and (o)**

For example:

To the best of the applicants' knowledge, and, if applicable, the applicants' representative's knowledge, the applicants, including class members, if applicable, are fully tax compliant for all applicable taxes.

**f. Description of the information the applicant believes should be deleted from the ruling before publication – section 79(4)(k)**

For example:

All references to the applicant's name should be deleted from the sanitised ruling before publication in order to protect the applicant's confidentiality. We further suggest that the name of the companies forming part of the proposed transaction should also be deleted.

**Annexure 2 – Letter of Consent**

**a. Person(s) to whom this ruling applies**

This ruling letter has been applied for by ABC Company, tax registration number 123/456/789/0. The co-applicants for this ruling are PQR Company, tax registration number 987/654/321/0, and XYZ Company, tax registration number 456/789/012/3.

**b. Relevant tax laws**

Sections 79(4)(i) and 87 of the TA Act.

**c. Consent**

The applicants represented by XYZ legal firm, herewith consent to the publication of the advance tax ruling by SARS in accordance with section 87 of the TA Act, provided that the publication is in such a form as does not reveal the identity of the applicants or class members. Before the publication, SARS will provide a draft copy of the edited (sanitised) ruling for review and comment. It is understood that SARS's determination regarding the contents of the published ruling is final.

**Annexure 3 – Draft ruling letter**

*[Example provided in blue font]*

**1. Person(s) To Whom This Ruling Letter Applies**

This ruling letter has been applied for by ABC Company, tax registration number 123/456/789/0. The co-applicants for this ruling are PQR Company, tax registration number 987/654/321/0, and XYZ Company, tax registration number 456/789/012/3.

## 2. Relevant Tax Laws

All legislative references are to the Income Tax Act 58 of 1962 (the Act).

The specific ruling has been requested in respect of section 45(4) of the Act.

## 3. Description of the Proposed Transaction

ABC Company, PQR Company and XYZ Company are all South African companies and are currently members of the same group of companies. ABC Company is the holding company for the group and currently owns 100% of the equity shares of both PQR Company and XYZ Company. PQR Company and XYZ Company are engaged in complementary lines of trade. In order to simplify the structure of the group and to improve efficiency, PQR Company is proposing to transfer all of its assets and liabilities to XYZ Company. On the completion of the transfer, PQR Company will liquidate into ABC Company. ABC Company and XYZ Company will continue to be members of the same group of companies.

## 4. Specific Conditions and Assumptions

Section 78(3) of the TA Act provides that a binding private ruling may be made subject to the conditions and assumptions prescribed in the ruling.

This ruling letter is made subject to the following conditions and assumptions:

- The transfer by PQR Company to XYZ Company constitutes an 'intra-group transaction', as defined in section 45(1).
- ABC Company and XYZ Company will continue to be members of the same group of companies following the proposed transaction.
- This ruling letter does not apply in respect of any tax consequences that may arise if XYZ Company ceases to be a member of the same group of companies as ABC Company.
- The proposed transaction is not part of or connected with any other transaction, operation or scheme.

## 5. Ruling

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

- Pursuant to paragraph (c) of section 45(4), ABC Company and PQR Company will be deemed to be one and the same company for purposes of paragraph (b) of section 45(4).

## 6. Period for which this ruling letter is valid

This binding private ruling will be valid for a period of [number] years from the date of the ruling.