



# **VAT Section 72 Decisions Process**

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## Reference Guide

## Preface

This guide provides information and guidelines on value-added tax (VAT) decisions under section 72 of the Value-Added Tax Act 89 of 1991 (VAT Act),<sup>1</sup> read with Chapter 7 of the Tax Administration Act 28 of 2011 (TA Act) (section 72 decision). It sets out the steps to be followed when applying for a section 72 decision (section 72 application) and explains certain terms. This guide does not deal with the process to be followed when applying for an advance tax ruling (ATR),<sup>2</sup> which process is also published on the South African Revenue Service (SARS) website or a VAT ruling<sup>3</sup> issued under section 41B read with Chapter 7 of the TA Act. See the *VAT Rulings Process Reference Guide* on the **SARS website** in this regard. Note that an application for a section 72 decision included as an alternative request to a VAT ruling cannot be accepted. Application must be made separately for a VAT ruling and a section 72 decision.

The information in this guide is based on the VAT and TA Acts as at the time of publishing and includes the amendments contained in the Taxation Laws Amendment Act 20 of 2022, the Rates and Monetary Amounts and Amendment of Revenue Laws Act 19 of 2022 and the Tax Administration Amendment Act 16 of 2022, promulgated on 5 January 2023 in *Government Gazettes* (GGs) 47826, 47825 and 47827, respectively.

The information in this guide is for guidance only. This guide is not an “official publication” as defined in section 1 of the TA Act and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling under section 89 of Chapter 7 of the TA Act or a ruling under section 41B unless otherwise indicated.

The previous edition of this guide has been withdrawn with effect from 16 August 2023.

The following guides have also been issued and may be referred to for more information relating to the specific VAT topics:

- *Vendors and Employers: Trade Classification Guide* (VAT / EMP 403)
- *Guide for Vendors* (VAT 404)
- *Guide for Fixed Property and Construction* (VAT 409)
- *Guide for Entertainment, Accommodation and Catering* (VAT 411)
- *Guide for Share Block Schemes* (VAT 412)
- *Guide for Estates* (VAT 413)
- *Guide for Associations not for Gain and Welfare Organisations* (VAT 414)
- *Guide for Municipalities* (VAT 419)
- *Guide for Motor Dealers* (VAT 420)
- *Guide for Short-Term Insurance* (VAT 421)
- *VAT Quick Reference Guide for Non-executive Directors*
- *VAT Reference Guide for Foreign Donor Funded Projects*
- *VAT Rulings Process Reference Guide*

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<sup>1</sup> All references to sections are to sections of the VAT Act, unless otherwise indicated.

<sup>2</sup> A binding class ruling or binding private ruling.

<sup>3</sup> A VAT class ruling or a VAT ruling.

For more information or in case you require a specific ruling on a legal issue, you may –

- visit the SARS website at **www.sars.gov.za**;
- contact the SARS National Contact Centre –
  - if calling locally, contact the SARS National Contact Centre on 0800 00 7277;  
or
  - if calling from abroad, contact the SARS National Contact Centre on +27 11 602 2093 (only between 8am and 4:30pm South African time);
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS branch, after making an appointment via the **SARS website**;  
or
- contact your own tax advisor or practitioner.

Comments regarding this guide may be e-mailed to **policycomments@sars.gov.za**.

#### **Leveraged Legal Products**

#### **SOUTH AFRICAN REVENUE SERVICE**

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## 1. Terminology

The following terms are used in this guide:

**Applicant:** An “applicant” is the vendor that applies for a section 72 decision (or on whose behalf an application is filed). If a representative such as a lawyer or accountant files an application on behalf of a third party, that third party is considered to be the applicant. Similarly, if a person files an application in his or her capacity as a representative taxpayer for another entity such as a company or trust, that other entity is considered to be the applicant. The application must be accompanied by a Power of Attorney (POA) where an application is filed on behalf of the applicant (that is, by a person acting in a representative capacity). Only one applicant applies for a section 72 decision in the case of a class of vendors. However, a list of the affected class of vendors (including their VAT registration numbers where applicable) is required. Also see 3.1. Note that for purposes of applications under section 72, the applicant **must** be a vendor<sup>4</sup> or a class of vendors.

**Application:** An “application” is a written request for a section 72 decision. The application must be submitted via the SARS eFiling ATR system.

**ATR rules:** Sections 75, 81, 83 – 87, 89 and 90 of the Chapter 7 of the TA Act that apply to section 72 decisions under section 72(2).

**BGR 56:** Application for a Decision under Section 72.

**Business day:** A day other than a Saturday, Sunday or public holiday, also excluding the days between 17 December of each year and 15 January of the following year, both days inclusive.

**Class of vendors:** Includes –

- vendors that are shareholders, members, beneficiaries, or the like in respect of a company, association, pension fund, trust or the like; or
- a group of vendors that may be unrelated but are similarly affected by the application of the VAT Act to a specific transaction and agree to be represented by an applicant.

**Co-applicant:** This applies where there is more than one party involved in a transaction, and in relation to the requested section 72 decision, the interpretation and application of the VAT Act is different for the co-applicants.

**Letter of acknowledgment:** A letter issued by SARS to the applicant once an application for a section 72 decision has met all the pre-acceptance and compliance requirements, and does not involve an apparent issue for which the application may be rejected under section 72(3) read with Public Notice 300.

**Negative section 72 decision:** A section 72 decision that differs materially from the proposed section 72 decision sought in the application.

**POA:** A Power of Attorney that should accompany an application where a representative applies for a section 72 decision on behalf of an applicant, granting the representative permission to act on behalf of the applicant. In the case of co-applicants, a POA must be completed and submitted on behalf of every applicant. Specimen POAs are available on the **SARS website**.

**Public Notice 299:** Currently published as Public Notice 299 in *Government Gazette* 44383 dated 1 April 2021 including any further Notices or updates issued, prescribing the application and cost recovery fees for binding private rulings and binding class rulings under section 81(1) of the TA Act.

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<sup>4</sup> “Vendor” as defined in section 1(1) of the VAT Act.

**Public Notice 300:** Currently published as Public Notice 300 in *Government Gazette* 44383 dated 1 April 2021 including any further Notices or updates issued, prescribing, under section 72(3), a list of transactions or matters in respect of which the Commissioner may decline to make a decision under section 72(1).

**Public Notice 748:** Currently published as Public Notice 748 in *Government Gazette* 40088 dated 24 June 2016, including any further Notices or updates issued.

**Rejection letter:** A letter issued informing the applicant that the application did not meet the pre-acceptance and compliance requirements, or contains an issue for which the Commissioner for SARS (Commissioner) may reject an application under section 72(3) of the VAT Act read with Public Notice 300.

**Sanitised template:** A template to be completed and submitted by the applicant upon application for a section 72 decision, to assist in streamlining the sanitisation and publication process. See the example(s) on the **SARS website** (uploaded below this guide).

**Section 72 decision:** A decision issued as to the manner in which provisions of the VAT Act will apply, or the calculation or payment of VAT will apply in certain circumstances, to a vendor or class of vendors, to overcome difficulties, anomalies or incongruities, provided the requirements and decisions set out in the said section, are met. Section 72 decisions are published as binding private or binding class rulings.

**Senior SARS official:** A SARS official who has specific written authority from the Commissioner, or who is occupying a post designated by the Commissioner in writing, to exercise powers and duties required by the TA Act.

**Tax Act:** The TA Act or an Act or portion of an Act, referred to in the SARS Act.

**Transaction:** Any transaction, deal, business, arrangement, operation or scheme and includes a series of transactions.

## 2. Background to section 72 decisions

A number of changes have been made to section 72 by Act 34 of 2019. The reason for these changes have been explained in the Explanatory Memorandum to the Taxation Laws Amendment Bill, 2019 as follows:

“When VAT was introduced in South Africa in 1991, the VAT Act contained provisions in section 72 that provides the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act shall be applied or the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided for in terms of the VAT Act, provided that the Commissioner is satisfied that as a consequence of the manner in which any vendor or class of vendors conducts his, her or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of the VAT Act. The arrangement or decision by the Commissioner as provided under section 72 of the Act must have the effect of assisting the vendor to overcome the difficulty, anomaly or incongruity without having the effect of substantially reducing or increasing the taxpayer’s ultimate liability for VAT.

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In 1996, the Constitution of the Republic of South Africa (‘Constitution’) came into effect. The introduction of the Constitution in 1996 came after the introduction of the VAT Act in 1991. Over the past years, challenges arose regarding the application of the mandatory wording of the other provisions of the VAT Act versus the discretionary wording of the provisions of section 72 of the VAT Act.

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In view of the fact that the provisions of the VAT Act are in itself mandatory, in order to address the above-mentioned anomaly, it is proposed that changes be made in section 72 of the VAT Act to align the provisions of this section with the spirit of the other provisions of the VAT Act. It is further proposed that transitional measures be introduced to deal with the consequences of the proposed amendments on existing rulings. As a result, any arrangement or decision made in terms of section 72 of the VAT Act which constituted a binding general ruling and ceases to be effective on or after 21 July 2019 or does not specify an effective period, shall cease to be effective on 31 December 2021.”

The aforementioned changes in section 72 limit the extent of the Commissioner’s discretion in making a decision under this section, by clarifying that a decision under section 72 cannot –

- have the effect of reducing or increasing the liability for VAT; or
- be contrary to the construct and policy intent of the VAT Act as a whole, or any specific provision in the VAT Act.

In addition, the Commissioner must be satisfied that similar difficulties, anomalies or incongruities have arisen or may arise for any other vendor of class of vendors (other than the applicant) of the same kind or who make similar supplies of goods or services.

Whilst the application for a decision under section 72 will be facilitated through the ATR system, the decision will be under section 72. In this regard, certain provisions<sup>5</sup> of the TA Act relating to advance tax rulings were introduced in the amended section 72 to align with the process of application and issuing of decisions under section 72.

These include, amongst others –

- a fee of R2 500 that is payable in respect of applications for a decision under section 72 in accordance with section 81 of the TA Act read with Public Notice 299; and
- the issuing, in accordance with section 90 of the TA Act, of procedures and guidelines in the form of binding general rulings (BGRs) for the implementation and operation of the process to obtain a decision under section 72. In this regard, see BGR 56 that sets out certain requirements and conditions relating to an application for a decision under section 72.

In addition, under section 72(3) read with Public Notice 300, the Commissioner may decline to make a decision in respect of the list of transactions set out in the said Public Notice.

Transitional rules were also introduced to deal with vendors that have an existing arrangement or decision issued under section 72 before 21 July 2019, which expires on or after that date. In certain cases, these decisions or arrangements can be reconfirmed. See *VAT Connect 10* dated March 2020 for more details.

### **3. Section 72 decision application process**

The process for issuing a section 72 decision involves a number of steps, beginning with the electronic submission of a section 72 decision application via eFiling and ending with the issuing of a section 72 decision signed by a designated senior SARS official. This part deals with the acceptable form and content of a section 72 decision application, as well as the submission of the application via eFiling.

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<sup>5</sup> Sections 75, 81, 83, 84, 85, 86, 87, 89 and 90.

### 3.1 Form and content of a valid section 72 decision application

The applicant must submit a complete and signed section 72 application as well as any other relevant supporting documents via eFiling (see **Annexure A**).

A POA must accompany an application made on behalf of an applicant. SARS provides a number of POA forms as templates to be used by persons that do not have access to any other POA forms for dealing with applications for section 72 decisions. It is, however, not compulsory to use a SARS POA form. When using SARS POAs, the person authorising another person to act on behalf of a legal person, has to indicate whether such authority is granted in a personal capacity, or as a “representative taxpayer”. The term “representative taxpayer” is defined in section 1 of the TA Act read with section 153(1) of the TA Act and section 46. For example, in the case of a company, the representative vendor is usually the public officer,<sup>6</sup> and in the case of any corporate or unincorporate body (other than a company) it is usually the treasurer of that body.

If you have been authorised by a legal person to grant a POA to another person, but you are not the “representative taxpayer” of that legal person, it is best to create your own POA form, or ensure that you indicate the capacity in which you are acting on the SARS POA form, for example, “authorised representative”.

In the case of an application for a section 72 decision on behalf of a class of vendors, one **VAT301** form must be submitted, but multiple POAs may be required. A class of vendors may consist of, for example, shareholders, members of an association, beneficiaries of a trust, or a group of persons that are unrelated. In the case of shareholders or beneficiaries of a trust, the person representing the class of vendors must obtain a POA from each shareholder or beneficiary. In the case of an association not for gain, the accounting officer, administrator or other authorised person of the association, may provide one POA to the third party representing the members of the association together with a list of the class members and their VAT numbers.

Ensure that the validity period for the POA is sufficient to accommodate the completion and issuing of the section 72 decision. A new POA will be required should the POA expire before the section 72 decision is ready to be issued. A legal person that has granted a POA to another person must ensure that a new POA is submitted if that other person is no longer representing the legal person.

Applications made on a “no-name basis” will not be accepted.

The POA must be signed (physical or electronic signature) by the relevant authorised persons and must also be signed by a witness.

To streamline the publication process, from 1 August 2023, applicants are required to submit a sanitised template when applying for a section 72 decision. Examples, with notes for completion, are available on the **SARS website**. See also [8](#).

In respect of all applications submitted from 1 April 2021, the application must contain the minimum information prescribed under section 90 of the TA Act read with BGR 56.

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<sup>6</sup> An officer referred to in section 246 (1), (2) and (3) of the TA Act.



<b>Requirements of the application letter</b>	
(a)	The applicant's name, VAT registration number (if applicable), <sup>7</sup> postal address, email address and telephone number.
(b)	The name, postal address, email address and telephone number of the applicant's representative, if any.
(c)	The relevant statutory provision(s) or legal issue(s) applicable in the circumstances.
(d)	A full and accurate description of the transaction (including financial implications) for which the decision is sought.
(e)	A complete description of any other transaction entered into by the applicant or class member before the application was filed or that may be undertaken after filing the application, if that other transaction may have a bearing on the tax consequences of the transaction, or may be considered to be part of a series of transactions involving the transaction in respect of which the decision is sought.
(f)	Specify the relevant provisions in the VAT Act that result in the difficulties, anomalies or incongruities.
(g)	<p>A concise description of the difficulties, anomalies or incongruities that have arisen or that may arise when applying the aforementioned provisions of the VAT Act.</p> <p>This means that the difficulty arises in connection with the application of the VAT Act itself. For example, a request will not be accepted if it is intended to merely be an arrangement to resolve a past non-compliance with VAT laws, or to address issues that arise in the business because of a lack of capacity.</p>
(h)	The applicant's interpretation of the relevant statutory provisions or legal issues, as well as an analysis of any relevant authorities <sup>8</sup> that the applicant considered or is aware of, and whether or not those authorities support or are contrary to the specific section 72 decision the applicant is seeking.
(i)	The reasons why the applicant believes the specific section 72 decision should be granted.
(j)	<p>A complete description of the impact the transaction might have upon the tax liability of the applicant or class member or if relevant, any connected person in relation to the applicant or class member.</p> <p>A decision under section 72 cannot have the effect of reducing or increasing the liability of tax under the VAT Act.</p>
(k)	<p>An explanation to support the view that the decision (if granted) will not reduce or increase the liability for tax levied under the VAT Act.</p> <p>A decision under section 72 cannot have the effect of reducing or increasing the liability of tax under the VAT Act.</p>

<sup>7</sup> Only a vendor or a class of vendors may apply for a decision under section 72.

<sup>8</sup> For example, SARS practice prevailing, rules under any other regulatory institution that the taxpayer is required to abide by, relevant case law, Explanatory Memoranda and official publications.

<b>Requirements of the application letter</b>	
(l)	An indication of how the difficulties, anomalies or incongruities that have arisen or that may arise, will apply equally to other vendors or a class of vendors that may face the same or similar business circumstances.
(m)	An explanation to show that the decision (if granted) will not be contrary to the construct and policy intent of the VAT Act as a whole or any specific provision in the VAT Act.
(n)	A statement that none of the grounds for the rejection of the application under section 72(3) of the VAT Act read with Public Notice 300 apply to the application.
(o)	<p>In the case of a class of vendors –</p> <ul style="list-style-type: none"> <li>• a description of the class of vendors; and</li> <li>• the impact the transaction might have upon the tax liability of the class of vendors or, if relevant, any connected person in relation to the applicant or class of vendors.</li> </ul> <p>A decision under section 72 cannot have the effect of reducing or increasing the liability of tax under the VAT Act.</p>
(p)	A statement confirming that the applicant(s) have complied with any registration requirements under a tax Act with regard to any tax for which the applicant(s) is or are liable, unless the application concerns a section 72 decision to determine that a person is not required to register under the VAT Act.
(q)	A statement confirming that all tax returns required to be rendered by the applicant under a tax Act have been rendered and tax has been paid or arrangements acceptable to SARS have been made for the submission of any outstanding returns or for the payment of any outstanding tax. In the case of a class of vendors making application, the class of vendors' representative should provide the aforementioned statement on behalf of the class of vendors.
(r)	Consent to the publication of the section 72 decision (positive and negative).
(s)	A description of the information that the applicant believes should be deleted from the final section 72 decision before publication in order to protect the confidentiality of the vendor or class of vendors.

**Note:** Any taxpayer information submitted is subject to the secrecy provisions under section 69 of the TA Act and will be kept strictly confidential. Any taxpayer information submitted through this channel may be used by SARS in the administration of any tax Act.

### 3.2 Submitting the application

The ATR eFiling system is used to facilitate the administrative process of receiving applications for a decision under section 72, including the levying and receipt of the required application fee. After this initial process, the application will be considered and finalised by Leveraged Legal Products: Indirect Taxes.

See **Annexure A** as well as the *Advance Tax Ruling Application Procedure* on the **SARS website** for details on how to log a request of a decision under section 72 on the eFiling system.

The request uploaded to the eFiling system will only be considered once the relevant documentation is uploaded and the application fee has been received (see **6.3**). You will receive a letter of acknowledgment or a rejection letter by no later than 10 business days of payment of the application fee (see **6.2**) after which you will receive an automated message via the ATR eFiling system that your application has been rejected. This message should not be of concern as it simply means that the initial administrative process (that is, application and payment of the application fee) under the ATR eFiling system has been concluded and the application is now transferred to Leveraged Legal Products: Indirect Taxes unit for review and finalisation.

Any submissions received by any other means, for example, submissions physically dropped off at SARS branch offices or emailed to any SARS official, will not be accepted, including a submission as part of a VAT ruling application under section 41B. For details on how to apply for a VAT ruling, see the *VAT Rulings Process Reference Guide*.

Please contact the SARS Contact Centre should you have any enquiries regarding your tax affairs, for example, outstanding refunds or returns, registration status etc or require assistance in completing or obtaining a VAT form, return, guide etc.

### 3.3 Registering for eFiling<sup>9</sup>

#### Step One: Access the SARS eFiling Portal

You can access the SARS eFiling Portal at [www.sarsefiling.co.za](http://www.sarsefiling.co.za) or by clicking on this icon



. You can also reach the Portal through the **SARS website**.

#### Step Two: Register for the ATR Service

**New eFiling Users:** Once you have reached the SARS eFiling Home Page, simply click on “Register” and follow the step-by-step instructions. When asked to choose the service for which you are registering, just tick the “Advance Tax Ruling” box and then complete the registration process.

**Existing eFiling Users:** If you are already a registered eFiling User, but have not registered for the ATR Service yet, log into eFiling and click on the “Services” prompt at the top of the page. When you reach the Services Page, click on the “Setup” prompt under “Other Services” in the left-hand column. On the next page, tick the “Advance Tax Ruling” box and click on “Register”.

#### Step Three: Access the ATR Services Site

Once you have completed Steps One and Two, go to the eFiling Services page and click on the “Advance Tax Ruling” prompt in the left-hand column. This will take you to the ATR Home Page. Once you are there, click on “New” to begin filing your application.

If you have any questions about the ATR Service, please contact the Advance Tax Ruling unit at [atrinfo@sars.gov.za](mailto:atrinfo@sars.gov.za).

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<sup>9</sup> Also see *Registering for the ATR System* on the **SARS website**.

## 4. Receipt of section 72 applications

Once the application fee has been paid, SARS will review whether the pre-acceptance and compliance requirements have been met to determine whether the application can be accepted. Only once the application has been formally accepted, will the matter be allocated as part of the workflow process of Leveraged Legal Products: Indirect Taxes unit.

### 4.1 Pre-acceptance and compliance process

The purpose of this process is to ensure that the required documentation has been submitted and that all requirements are complied with.

The following pre-acceptance and compliance checks will be conducted:

- (a) Confirming that the application letter satisfies the requirements set out in section 90 of the TA Act read with BGR 56.
- (b) Confirming that the application letter together with all the relevant annexes are attached (including the POA, where applicable).
- (c) Confirming that there are no tax returns or tax debts outstanding or if arrangements acceptable to SARS have been made in respect of the outstanding returns or debts.

Some examples of the most common reasons for applications not qualifying under the pre-acceptance and compliance checks are –

- (i) the details of the transaction have not been provided;
- (ii) the relevant statutory provisions that are relied upon for the interpretation have not been provided;
- (iii) the application does not contain the applicant's interpretation of the relevant statutory provisions;
- (iv) a POA for the applicant has not been submitted;
- (v) the applicant has not demonstrated that the decision (if granted) will not be contrary to the intention of a specific provision of the VAT Act or the policy construct of the VAT Act as whole; and
- (vi) the applicant has outstanding taxes or returns (see **5.1**), and has not submitted proof that arrangements acceptable to SARS have been made in this regard.

## 5. Rejected applications

A section 72 application **may** be rejected if –

- (a) the application does not meet the pre-acceptance and compliance process (see **5.1**). In this instance, the application will be rejected, and the applicant will be notified accordingly. Once the application has been rejected, it cannot be re-opened. The applicant will have to upload a new request on the eFiling system, and pay the application fee, before the request will be considered;
- (b) the application deals with a matter listed in section 72(3) of the VAT Act read with Public Notice 300; or
- (c) any additional information requested is not submitted within 14 business days (unless a further period is agreed upon).

In the case of points (a) and (b) above, a letter of acknowledgment (see **6.2**) will not be issued. A rejection letter, stating the reasons for the rejection will be issued. In the case of point (c), where information is not submitted within the agreed timelines, a rejection letter will also be issued.

### 5.1 Rejections under section 72(3) of the Value-Added Tax Act read with Public Notice 300

Public Notice 300 incorporates the rejections under section 80 of the TA Act and also contains additional matters in respect of which a section 72 application will be rejected:

<b>Section 80(1) of the TA Act<sup>10</sup></b>	
(a)	<p>An application requesting an opinion, conclusion or determination regarding –</p> <ul style="list-style-type: none"> <li>(i) the market value of an asset, for example, confirmation of the consideration in respect of the supply of a property;</li> <li>(ii) the application or interpretation of the laws of a foreign country, for example, confirmation that a person is resident of a foreign country;</li> <li>(iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant or a member of a class of vendors: Under the VAT Act, the consideration is deemed to be the open market value in certain instances. A section 72 decision will not be issued on what the open market value is, or how the price should be determined if section 10(4) does not apply;</li> <li>(iv) the constitutionality of a tax Act, for example, any application containing a statement or assumption that a tax law is unconstitutional;</li> <li>(v) a proposed transaction that is hypothetical or not seriously contemplated at the time the application is filed, for example – <ul style="list-style-type: none"> <li>• a transaction where all the parties to the transaction are not identified;</li> <li>• a future endeavour with no specific plans for implementation;</li> </ul> </li> <li>(vi) a matter which can be resolved by SARS issuing a directive under the Fourth Schedule or the Seventh Schedule to the Income Tax Act;</li> <li>(vii) whether a person is an independent contractor, labour broker or personal service provider; or</li> <li>(viii) an application that is submitted for academic purposes, for example, an application by a student relating to a thesis.</li> </ul>
(b)	<p>An application that contains –</p> <ul style="list-style-type: none"> <li>(i) a frivolous or vexatious issue, for example, where the answer is apparent under the plain language of the law;</li> <li>(ii) alternative courses of action by the applicant or member of a class of vendors not seriously contemplated, for example applications – <ul style="list-style-type: none"> <li>• seeking advice on how a transaction should be structured;</li> </ul> </li> </ul>

<sup>10</sup> For further guidance on the rejections under section 80 of the TA Act, see the *Comprehensive Guide to Advance Tax Rulings* on the **SARS website**.

	<ul style="list-style-type: none"> <li>• requesting SARS to suggest different alternatives which would not result in a negative section 72 decision;</li> </ul> <p>(iii) an issue that is the same as or substantially similar to an issue that is –</p> <ul style="list-style-type: none"> <li>• currently before SARS in connection with an audit, investigation or other proceeding involving the applicant or a member of the class of vendors or any connected person in relation to the applicant or any member of the class of vendors;</li> <li>• the subject of a policy document or draft legislation that has been published; or</li> <li>• subject to dispute resolution under Chapter 9 of the TA Act.</li> </ul> <p>A section 72 decision cannot be issued to resolve a dispute with SARS, or to prevent a SARS verification, audit or investigation on a specific matter. If you are not in agreement with an audit finding or assessment, you are required to liaise with the auditor, or follow the objection and appeal process. Qualifying taxpayers seeking to regularise their affairs are also encouraged to apply directly to the unit responsible for the Voluntary Disclosure Programme.</p> <p>SARS will also not issue a section 72 decision based on draft legislation, before its promulgation or effective date. Applications in relation to existing laws being the subject of proposed amendments, as well as policy documents issued for comment, will be rejected.</p>
(c)	<p>An application that involves the application or interpretation of a general or specific anti-avoidance provision or doctrine.</p> <p>An example is an applicant requesting a section 72 decision on the basis that the sole or main purpose of a transaction for purposes of section 73 is not the obtaining of a tax benefit.</p>
(d)	<p>An application that involves an issue –</p> <p>(i) that is of a factual nature:</p> <p>Applications mainly concerning the interpretation of the relevant contractual arrangements, a determination of the activities of the applicant, or confirming the factual position, as opposed to the interpretation of the VAT legislation in respect of a set of facts, will be rejected.</p> <p>(ii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the application:</p> <p>For example, where the resolution of the issue depends on –</p> <ul style="list-style-type: none"> <li>• the future action of another party which is not a co-applicant to the application;</li> <li>• future events beyond the control of the applicant or another party to the transaction;</li> </ul> <p>(iii) which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation;</p>

	<p>(iv) in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction who has not applied for a section 72 decision;</p> <p>(v) in respect of a transaction that is part of another transaction which has a bearing on the issue, the details of which have not been disclosed, for example, complex multi-party or multi-step transactions;</p> <p>(vi) which is the same as or substantially similar to an issue upon which the applicant has already received an unfavourable section 72 decision.</p>
(e)	<p>An application that involves a matter the resolution of which would be unduly time-consuming or resource-intensive, for example, where –</p> <ul style="list-style-type: none"> <li>• the resolution depends on industry research to be conducted;</li> <li>• engagement with National Treasury, industry bodies and related stakeholders are required; or</li> <li>• the application involves voluminous supporting documentation to be taken into account.</li> </ul>
(f)	<p>An application that requests SARS to make a section 72 decision based on the substance of a transaction and disregard its form.</p> <p>These matters generally form the subject matter in court proceedings and are decisions of a court. Examples of such decisions taken are –</p> <ul style="list-style-type: none"> <li>• <i>Zandberg v van Zyl</i>;<sup>11</sup></li> <li>• <i>Commissioner of Customs and Excise v Randles, Brothers &amp; Hudson Ltd</i>;<sup>12</sup> and</li> <li>• <i>Erf 3183/1 Ladysmith (Pty) Ltd and another v CIR</i>.<sup>13</sup></li> </ul>
<b>Section 80(2) of the TA Act read with Public Notice 300</b>	
(g)	<p>The liability for VAT of a supplier of goods or services that is not a party to the application.</p> <p>In order for the request to be considered, the supplier must be the applicant, or a co-applicant to the section 72 application and a POA is required for each party.</p>
(h)	<p>The entitlement to deduct input tax in respect of goods or services acquired by a person that is not a party to the application.</p> <p>In order for the request to be considered, the person seeking the deduction must be the applicant, or both parties (the supplier and the recipient) must be co-applicants to the VAT ruling application and a POA is required for each party.</p>
(i)	<p>Applications requiring the Commissioner to determine whether a person is acting as an agent or principal in respect of a supply of goods or services.</p>
(j)	<p>The application of section 8(15) and whether a supply of goods or services</p>

<sup>11</sup> 1910 AD 202 at 209/302 at 309.

<sup>12</sup> 1941 AD 369.

<sup>13</sup> 1996 (3) SA 942.

	constitutes a single supply.
(k)	Confirmation that the issuing of a tax invoice, debit or credit note complies with the requirements imposed by any law relating to electronic communications, or that any technical requirements are met in respect of electronic invoicing.
(l)	Confirmation that a supply of accommodation or any right to occupy a building or part thereof, constitutes “commercial accommodation”.
(m)	Confirmation that a supply by a “welfare organisation” to a public authority or a municipality qualifies for the zero rate under section 11(2)(n).
(h)	Applications for directives or certificates under the laws administered by the Commissioner if other mechanisms have been established by which those directives or certificates may be obtained.
(o)	Applications concerning the attribution, allocation or apportionment of expenditure or input tax for VAT purposes. A request for an alternative apportionment method may, however, be made under section 41B of the VAT Act.
(p)	Applications pertaining to the tax consequences of transactions contained in agreements which have already been concluded, except requests for – <ul style="list-style-type: none"> <li>(i) a section 72 decision; or</li> <li>(ii) the extension of the validity of a section 72 decision before its expiry date, if the facts (including all the terms of the transaction), the applicable provisions of the relevant legislation and the applicable legal principles remained the same.</li> </ul>
(q)	Applications in respect of which the applicant has not rendered all tax returns or paid any tax, unless arrangements acceptable to SARS have been made.
<b>Section 80(3) of the TA Act</b>	
(r)	If SARS requests additional information in respect of an application and the applicant fails or refuses to provide the information, SARS may reject the application (see 5), for example, where the applicant has been requested to submit further information within 14 business days, and the applicant either – <ul style="list-style-type: none"> <li>• fails to provide the information within the said days; or</li> <li>• fails to request an extension of days for submission of the additional information.</li> </ul>
<b>Additional rejections under section 72(3) read with Public Notice 300</b>	
(s)	Transactions or matters referred to in any regulation issued under section 74, which is to say regulations issued by the Minister, including regulations to counter VAT malpractices.
(t)	A request to deem— <ul style="list-style-type: none"> <li>(i) a project to be a “foreign-donor funded project” as defined in section 1(1);</li> </ul>



	<ul style="list-style-type: none"> <li>(ii) a payment made to or on behalf of that vendor in terms of a national housing programme contemplated in the Housing Act 107 of 1997 read with sections 8(23) and 11(2)(s);</li> <li>(iii) a particular payment to be a “donation” or “grant” as defined in section 1(1);</li> <li>(iv) an activity to be a “welfare organisation” as defined in section 1(1) read with Government Notice 112 published in the <i>Government Gazette</i> 27235 of 11 February 2005;</li> <li>(v) a supply to be made or not made;</li> <li>(vi) a person to be the “recipient” of a supply;</li> <li>(vii) the issue of a token, voucher or stamp (other than a “postage stamp” defined in section 1 of the Postal Services Act 124 of 1998) to fall within section 10(18), (19) or (20) respectively, otherwise than provided for in the these subsections;</li> <li>(viii) an exemption to apply on the importation of goods, as contemplated in section 13(3) read with Schedule 1 or the zero rate to apply on the supply of goods contemplated in section 11(1)(g), 11(1)(j) and 11(1)(w) read with Schedule 2; and</li> <li>(ix) any branch or main business of an enterprise, permanently situated at premises outside the Republic, to be carried on by a person separate from the vendor, as contemplated under proviso (ii) of the definition to “enterprise” in section 1(1).</li> </ul>
(u)	<p>A request to allow—</p> <ul style="list-style-type: none"> <li>(i) a person to account on the invoice or payments basis, otherwise than provided for in section 15;</li> <li>(ii) the submission of returns and payment of tax envisaged under section 28 by a person other than the vendor, or a person other than the person contemplated in sections 54(4) and (2B);</li> <li>(iii) the issuing and receipt of tax invoices envisaged in section 20, in the name of any person other than the vendor, or any other person than the agent contemplated in section 54;</li> <li>(iv) an input tax deduction under section 16(2) read with section 16(3) by any person other than the vendor, or by a person other than the person contemplated in section 54(2A)(b) and (6);</li> <li>(v) an enterprise carried on under paragraph (b)(v) of the definition of “enterprise” and any other enterprise activity, using a single VAT registration number.</li> <li>(vi) an “intermediary” to register and account for the supply of “electronic services” where the foreign supplier of “electronic” services is liable to register for VAT as contemplated in section 23(1A).</li> <li>(vii) the non-payment of VAT charged under the circumstances prescribed under section 31(1)(e).</li> </ul>

## 6. Allocation of a successful application

### 6.1 Categorisation of section 72 applications

Once a section 72 application passes the pre-acceptance and compliance requirements listed above, the allocation process will commence. Section 72 applications are categorised as complex policy matters and the estimated time to complete is 90 business days.

It is important to take note of the above timeline when applying for a section 72 decision. Also allow enough time for possible delays, for example, where your application does not meet the pre-acceptance and compliance requirements resulting in a rejection (in which case you will have to submit a new application, see **6.3**), or further particulars are required in addition to the information you submitted.

The following days are suspended and are not taken into account when calculating the estimated time of completion:

- The business days from 17 December to 15 January.
- The business days commencing from the request for information, until and including five business days after receipt of all the information requested (see **5** and **6.4**).
- The business days commencing from the request for a meeting (see **6.6**) until and including the business day following the meeting (unless further information has been requested at the said meeting).

New section 72 applications received during the period 17 December to 15 January each year will only be considered from 16 January onwards, provided the 16<sup>th</sup> day is a business day.

Whilst every endeavour is made to adhere to the estimated timelines to consider, finalise and issue section 72 decisions, delays may occur because of capacity constraints, unforeseen circumstances and unexpected complexities related to the application that are only uncovered subsequent to the matter being allocated. In addition, certain applications may require consultation with third party stakeholders such as National Treasury and other statutory bodies. In these instances, you will be informed that the section 72 decision may not be finalised within the estimated timelines.

### 6.2 Letter of acknowledgement

A letter of acknowledgement will be issued in the case of a **successful** application. The letter of acknowledgment will include the following:

- A unique reference number for the application.
- The name of the allocated SARS official responsible for drafting the section 72 decision (the drafter).
- The estimated completion date.

The allocated unique reference number must be used in all further communication in respect of the application.

The letter of acknowledgment will be issued within 10 business days from the date that the application has been received (see **6.3**). Note, however, that the application may be rejected, in which case no letter of acknowledgment will be issued (see **5**). The estimated time to completion will be calculated from the date of issue of the letter of acknowledgment and not the date that the application was submitted, or the date of payment of the application fee.

All correspondence regarding the section 72 application must be made with the SARS official responsible for drafting the ruling as indicated in the letter of acknowledgement, **and** copied to **VATSection72@sars.gov.za** to ensure efficiency in communication.

An application may still be rejected should it subsequently become apparent that one or more of the exclusions apply (see **5**). Based on the declaration made upon submission of your application that none of the exclusions apply, the application fee will generally not be refunded, except in extraordinary circumstances (see **6.3** as well as *Comprehensive Guide to Advance Tax Rulings* on the **SARS website**).

### **6.3 Fees**

An application fee under section 81(1)(a) of the TA Act read with section 72(2), of R2 500 (see Public Notice 299) is payable on all applications submitted from 1 April 2021, and must be paid within 10 business days from the date of application made via eFiling. You will receive an e-mail from **ATRInfo@sars.gov.za** regarding the payment requirements. Should your application be rejected, the application fee will not be refunded. Should you make a new application subsequently, all procedures required in this guide must be adhered to, including making a new payment of the fee.

### **6.4 Request for additional information**

In certain instances, additional information may be requested subsequent to the letter of acknowledgment being sent out. This additional information must be submitted within 14 business days (or further period stipulated) from the date of the request unless an extension is granted in writing. No work will commence on the application until the requested information has been submitted. The estimated time to finalise the section 72 decision will also be adjusted accordingly.

Should the information received result in a substantial change to the nature of the application, the number of days to completion may be extended. Applicants will be informed accordingly.

### **6.5 Substantive review**

Once all the information has been received, the drafter will proceed with the substantive review of the application. During this process, the drafter may request further additional information or a meeting to clarify certain aspects of the application (see **6.4**). Failure to submit the required information within the period stipulated in the request for additional information may result in the application being rejected.

### **6.6 Meetings**

During the substantive review process, meetings may be required to discuss and clarify the issues pertaining to the application. The applicant may be requested to update the application with additional facts disclosed during these meetings.

No meetings will be held with applicants on the merits or facts of a matter, before a section 72 application has been accepted and allocated. In other words, no work will commence on the application until the applicant has received the letter of acknowledgement referred to in **6.2** and paid the prescribed fee referred to in **6.3**. It will also be premature for SARS to indicate whether a section 72 decision outcome will be positive or negative, until the internal review processes have been finalised (see **6.8**).

## **6.7 Negative section 72 decisions**

SARS will provide an applicant with an opportunity to make representations, before issuing a negative section 72 decision. The purpose of these representations is to allow the applicant to clarify any facts, or to provide additional information supporting the facts originally given, which may result in a different interpretation of the VAT consequences. If, during these consultations, it becomes apparent that the facts are different from those originally submitted during the section 72 application process, the applicant may be required to submit a new section 72 application and pay the application fee. See 6.4. The original application will accordingly be rejected on this basis.

The negative section 72 decision will be issued subsequent to the aforementioned representations.

A person cannot object or appeal against a negative section 72 decision. In the event that you are not satisfied with the section 72 decision, you may under the Promotion of Administrative Justice Act 3 of 2000 request the Commissioner to provide written reasons for the decision. If, after receiving the Commissioner's reasons, you are still dissatisfied with the outcome, you may approach the High Court and ask for the matter to be reviewed.

## **6.8 Issuance of a section 72 decision**

A section 72 decision will be issued once the relevant internal review processes have been finalised and it has been approved and signed off by the relevant senior SARS official. A draft section 72 decision is not provided to the applicant before issuing the section 72 decision.

All section 72 decisions issued must be signed by a designated senior SARS official within Leveraged Legal Products: Indirect Taxes unit. Any section 72 decision not signed by a senior SARS official is invalid and not binding on the Commissioner.

The section 72 decision will be sent to the email address that has been provided in the section 72 application.

## **7. Effect of a section 72 decision**

### **7.1 Binding nature of a section 72 decision**

A section 72 decision is binding on SARS, subject to certain requirements and limitations. This means that SARS must interpret and apply the relevant legislation in accordance with the section 72 decision that was issued in connection with your application.

### **7.2 The applicability of a section 72 decision**

A section 72 decision only applies to the vendor or a class of vendors persons if –

- the vendor is an applicant or an affected class member identified in the section 72 decision;
- the provision(s) of the VAT Act at issue is or are the subject of the section 72 decision;
- the set of facts and circumstances or the transaction presented by the applicant are or is the same as the particular set of facts and circumstances or the particular transaction specified in the section 72 decision;
- the applicant's set of facts and circumstances or transaction falls entirely within the effective period of the section 72 decision; and

- any assumptions made or conditions imposed by SARS in connection with the validity of the section 72 decision have been satisfied or carried out.

A third party can therefore not rely on a section 72 decision issued to another party, even where the facts of the transactions are the same. A section 72 decision may also not be cited in any proceeding before SARS or the courts, unless that proceeding involves the applicant, or class member.

### 7.3 Section 72 decision ceasing to be binding

A section 72 decision may in certain instances cease to be effective, or become *void ab initio* (from the outset).

Some examples of instances in which section 72 decisions have no binding effect from the outset are –

- (a) the facts pertaining to the transaction are materially different from those given during your application, and on which the outcome of the section 72 decision is based;
- (b) fraud, misrepresentation or non-disclosure of material facts; and
- (c) a condition or assumption stipulated by SARS in the section 72 decision is not met.

Some examples of instances in which a section 72 decision may cease to be effective are subsequent –

- (i) changes in the relevant tax laws; and
- (ii) judicial decisions that contradict or overturn the section 72 decision or principle upon which the section 72 decision is based (unless the decision is on appeal).

The section 72 decision ceases to be effective if any of the events above occur, regardless of whether SARS publishes a notice of the withdrawal or modification.

## 8. Publication in edited form

A section 72 decision that is issued (whether positive or negative), may be published in a sanitised or redacted form that does not reveal the identity of the applicants.

A section 72 decision is published by consent of the applicant to which it has been issued. It has a binding effect upon SARS, applies to the applicant and class members (co-applicants) only and is published for general information. It does not constitute a practice generally prevailing as envisaged in section 1 of the TA Act. A third party may, under no circumstance, rely on a section 72 decision. In addition, published section 72 decisions may not be cited in any dispute with SARS, other than a dispute involving the applicant or any co-applicant(s) identified in the ruling that was issued.

For applications submitted before 1 August 2023, the applicant will be given a draft of the section 72 decision which is proposed for publishing to review before its release. The applicant must review this draft carefully and notify the Commissioner if it contains any confidential information<sup>14</sup> that the applicant believes should be deleted. For applications received on or after 1 August 2023, SARS will make the relevant edits to the sanitised template submitted with the application and request the applicant to review the draft of the section 72 decision which is proposed for publishing. However, in both instances, under section 87(4) of the

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<sup>14</sup> For example, the identity of the applicant or other parties to the transaction.

TA Act, SARS's determination regarding the contents of the sanitised and anonymised section 72 decision is final.

In certain limited circumstances, due to any unique facts relating to the parties to the transaction, or to the transaction itself, it may not be possible to publish the section 72 decision in a form that would not reveal confidential information. In such a situation, SARS may publish a summary of the issues raised in the application and the section 72 decision that was given.

If a section 72 decision has already been published on a similar transaction, SARS may decide not to publish a sanitised section 72 decision on grounds of duplication.

For more information on the publication and treatment of confidential information, see the *Comprehensive Guide to Advance Tax Rulings*.

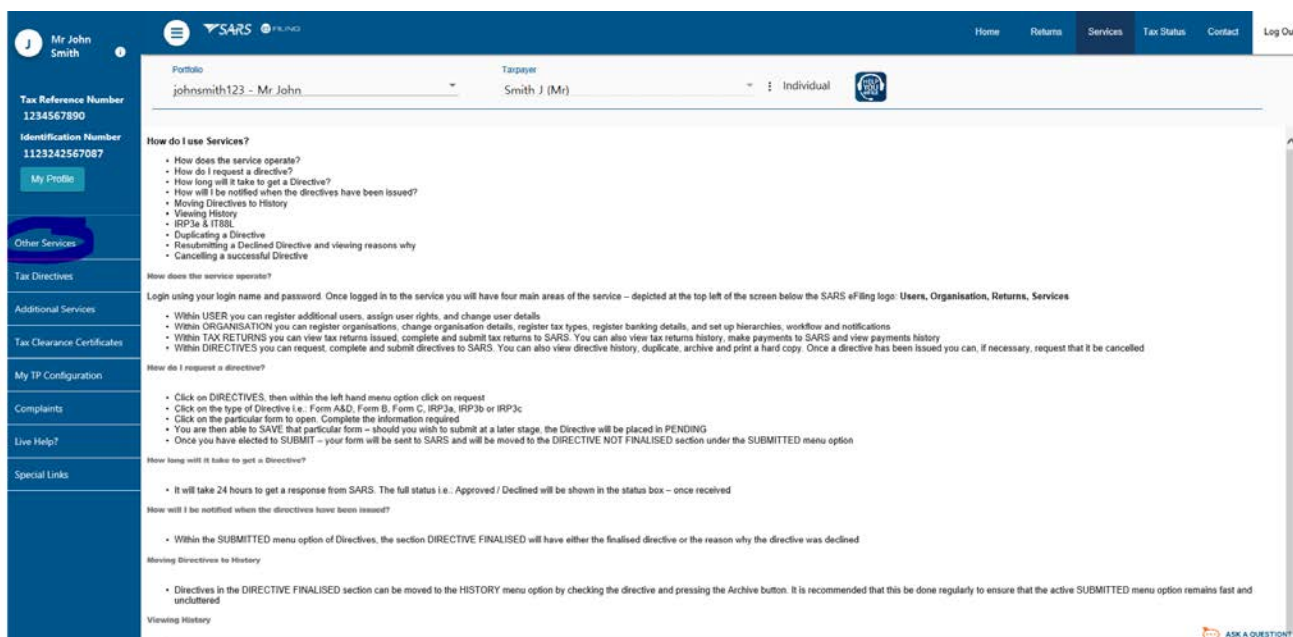
**Note:** Under section 87(6) of the TA Act, the application or interpretation of a tax Act to a transaction does not constitute confidential information and may not be treated as such.

## 6. Advance tax rulings

The differences between a VAT ruling, a decision under section 72 and an ATR, are set out in **Annexure A**. Advance tax rulings are issued under Chapter 7 of the TA Act. A dedicated ATR unit deals with ATR applications, including VAT-related ATR applications, which should be submitted via eFiling. A taxpayer cannot submit an application for an ATR and a VAT ruling on the same issue simultaneously. In this instance, the application for a VAT ruling will be rejected. See the *Comprehensive Guide on Advance Tax Rulings* for more details relating to ATRs.

## Annexure A – How to log a request for a decision under section 72

1. Log on to eFiling. Make sure that you have access to view “Advance Tax Rulings”. If you do not have access, you need to make arrangements with your eFiling Administrator, or Information Technology (IT) resource who set up your eFiling account, so that access can be granted to the Advance Tax Ruling section in eFiling.
2. Once you have access, click “Services” at the top of the page, and then “Other Services” at the left of the page.



3. Click “Advance Tax Ruling”. There will be a drop down list under “Other Services” on the left and the Advance Tax Ruling option will become accessible. If this option cannot be seen or an error appears after clicking it, access has not been granted to the ATR service. Please confirm with your Administrator or IT resource that access was granted and confirmed.



4. Click “New” to start a new application.

The screenshot shows the 'Advance Tax Rulings Home' page. On the left is a navigation menu under 'Services' and 'ATR'. The main content area includes:
 

- Links to other information:** Frequently Asked Questions, Legislation, Brochure, Exclusion List, Policy Documents.
- Contact details:** Email: ATRInfo@sars.gov.za, Fax: 012 422 4922. Physical Address: Lettie La SARS, 299 Brookhurst Street, New York Avenue, Brooklyn, Pretoria, South Africa.
- What is an Advance Tax Ruling?** An Advance Tax Ruling is a written statement issued by the Commissioner that states how the Commissioner will interpret and apply specific provisions of the tax laws.
- What is a Binding Private Ruling?** A Binding Private Ruling is a written statement issued by the Commissioner in response to a request by a taxpayer (the applicant) that asks the Commissioner to state how a provision or provisions of the tax law would be interpreted and applied in respect of a specific proposed transaction.
- What is a Binding Class Ruling?** A Binding Class Ruling is a written statement issued by the Commissioner in response to a request by a class of persons, represented by the applicant that requests the Commissioner to state how a provision or provisions of the tax law would be interpreted and applied in respect of a specific proposed transaction applicable to that class of persons.
- Are there charges for these services?** Yes. Applications for Binding Private Rulings and Binding Class Rulings are subject to both an application fee and a cost-recovery fee. The general application fee is R14 000. However, where the applicant for a Binding Private Ruling is a Small, Medium and Micro Enterprise (SMME), the application fee is R2 500. This fee must be paid when you file your application.

5. Complete the mandatory pre-screening checklist (Part A and Part B). The questions must be answered in order to continue with the application. You will need to select “Yes” by “SMME” in order to pay an application fee of R2 500 (this is the standard application fee applicable to decisions under section 72). If you select “No”, the system automatically calculates the application fee as R14 000. In this instance, you will have to redo your application on eFiling in order for the system to calculate the R2 500 application fee.

- Whilst binding private rulings (BPRs) and binding class rulings (BCRs) do not extend to completed transactions, applications for decisions under section 72 are not limited to proposed transactions. You therefore need to indicate if the transaction is completed or not.
- The mandatory pre-screening checklist on eFiling does not contain all the transactions or matters on which the Commissioner may decline to make a decision as envisaged in section 72(3). Before submitting your application, you must consider whether any of the other exclusions as set out in 5.1 apply.

The screenshot shows the 'Application - Pre-Screening Checklist' page. It includes:
 

- Current Profile:** Default Profile (Change Profile)
- Part A: Mandatory Exclusions**
- All the following questions need to be answered before you can continue:**
  - Does your application request or require a ruling in connection with a completed transaction?
  - Does your application request or require a ruling in respect of any of the following:
    - The market value of and asset
    - The interpretation/application of foreign law
    - The pricing of goods or services
    - The constitutionality of any tax law
  - A transaction that is hypothetical or not seriously contemplated?
  - An Income tax ruling for a partnership?
  - Does your application relate to an employer's duty to determine whether a person is an independent contractor, labour broker, personal service broker or a personal service trust?
  - Does your application present, raise or contain issues that are the same as or substantially similar to the issues that are:
    - Currently before SARS in connection with an audit, examination, investigation or other proceeding involving you or a connected person in relation to you
    - The subject of draft legislation
    - Pending before the courts
    - Contained in the current "No Ruling List" (Click here to view the list)
  - Is your application being submitted for academic purposes (e.g. as research for a publication)?
  - Does your application request or require a ruling in connection with possible alternative courses of action in respect of the proposed transaction?
- NOTE:** Any application that presents, raises or contains a frivolous or vexatious issue will be rejected without any refund of the application fee. Exclusion List



**Part B: Discretionary Exclusions**

Your application may be declined by the Commissioner if the answer to any of the following questions is "Yes".

	Yes	No
1. Does your application request a ruling in respect of the application or interpretation of any general or specific anti-avoidance rule?	<input type="radio"/>	<input checked="" type="radio"/>
2. Does your application present an issue that is of an inherently or distinctly factual nature (e.g. whether expenditure is of a revenue or capital nature)?	<input type="radio"/>	<input checked="" type="radio"/>
3. Does your application invoke a proposed transaction in respect of which material facts cannot be determined at this time?	<input type="radio"/>	<input checked="" type="radio"/>
4. Does your application present an issue the resolution of which would depend on assumptions made about future events or other matters which cannot be reasonably determined at this time?	<input type="radio"/>	<input checked="" type="radio"/>
5. Does your application present an issue that would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation?	<input type="radio"/>	<input checked="" type="radio"/>
6. Does your application present an issue which is the same or substantially similar to an issue upon which the applicant has already received a ruling?	<input type="radio"/>	<input checked="" type="radio"/>
7. Does your application present an issue in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction (and that other party has not applied for a ruling)?	<input type="radio"/>	<input checked="" type="radio"/>
8. Does your application present an issue in respect of a proposed transaction that is part of another transaction which has a bearing on that issue (and the details of that other transaction have not been disclosed)?	<input type="radio"/>	<input checked="" type="radio"/>

If Yes, justify your statement by submitting an explanatory statement with your supporting information.

**Part C: Additional pre-screening information**

	Yes	No
1. Do you have a South African bank account at one of the four major banks? i.e. Standard Bank, ABSA, FNB or Nedbank? (If no, please see instructions)	<input type="radio"/>	<input checked="" type="radio"/>
2. Is the Applicant a SMME (Small, Medium and Micro Enterprise)?	<input checked="" type="radio"/>	<input type="radio"/>

**NOTE:** Please contact the ATR Office.

**Terms and Conditions**

I accept the Terms and Conditions [Click here to view Terms and Conditions](#)

Next

6. Next you need to complete the application details on the eFiling system. The information below is required to identify the application number of the decision under section 72 (applications by a vendor will start with 2021000###; applications by a class of vendors will start with 2021500###).

- Select “Binding Private Ruling” for a decision under section 72 relating to a vendor, or “Binding Class Ruling” for a decision under section 72 relating to a class of vendors.
- Under “Subject of the ATR application”, select “Value-Added Tax” under number 2, and “Other”.

### Application - Choose Tax Payer

**Tax Payer or Class the application is made for:** None [Change Tax Payer](#)

I am applying for:

Binding Private Ruling

Binding Class Ruling

In my Capacity as:

Personal Capacity

Representative Tax payer

On behalf of a Third Party or Class

**Subject of ATR Application**

Please complete the main area(s) within which you seek to obtain a ruling (please do not indicate more than 4 areas):

1. The Income Tax Act, 1962

Controlled Foreign Companies  Gross Income  Deductions  Corporate Rules  Donations tax

Secondary Tax on Companies  Allowances  Capital Gains Tax  Other Income Tax

2. The Value Added Tax Act, 1991

Imports / Exports  Going Concerns  Vendor Status  Other

3. The Stamp Duty Act, 1968

4. The Transfer Duty Act, 1949

5. The Uncertificated Securities Tax Act, 1998

Previous Next

7. Provide details of the taxpayer.

- These are the details of the person applying for the decision under section 72.

### Application - Natural Person

**Details of Person:**

<b>Name of Natural Person:</b>	<input type="text" value="John Smith"/>	<b>Residential Address:</b>	<input type="text" value="278 Bronkhorst Street"/>
<b>Postal Address:</b>	<input type="text" value="Private Bag X923"/>	<input type="text" value="Nieuw Muckleneuk"/>	<input type="text" value="Pretoria"/>
<b>City</b>	<input type="text" value="Pretoria"/>	<input type="text" value=""/>	<input type="text" value=""/>
<b>Postal Code:</b>	<input type="text" value="0001"/>	<b>Residential Code:</b>	<input type="text" value="0181"/>
<b>Tel Code:</b>	<input type="text" value="012"/>	<b>Cell No:</b>	<input type="text" value="082-000-0000"/>
<b>Tel No:</b>	<input type="text" value="000-0000"/>	<b>EEmail Address:</b>	<input type="text" value="jsmith@test.co.za"/>

Are you a citizen of South Africa?

Are you registered in South Africa for tax purposes?

<b>Yes</b>	<b>No</b>
<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>

**ID No:**

8. Provide the contact details.

- If you select that you are registered for tax in South Africa, additional lines will open up to include your income tax, VAT and PAYE reference numbers. If the numbers are incorrect, you will not be able to continue with your application.

### Application - Natural Person

**Details of Person:**

<b>Name of Natural Person:</b>	<input type="text" value="John Smith"/>	<b>Residential Address:</b>	<input type="text" value="278 Bronkhorst Street"/>
<b>Postal Address:</b>	<input type="text" value="Private Bag X923"/>	<input type="text" value="Nieuw Muckleneuk"/>	<input type="text" value="Pretoria"/>
<b>City</b>	<input type="text" value="Pretoria"/>	<input type="text" value=""/>	<input type="text" value=""/>
<b>Postal Code:</b>	<input type="text" value="0001"/>	<b>Residential Code:</b>	<input type="text" value="0181"/>
<b>Tel Code:</b>	<input type="text" value="012"/>	<b>Cell No:</b>	<input type="text" value="082-000-0000"/>
<b>Tel No:</b>	<input type="text" value="000-0000"/>	<b>EEmail Address:</b>	<input type="text" value="jsmith@test.co.za"/>

Are you a citizen of South Africa?

Are you registered in South Africa for tax purposes?

<b>Yes</b>	<b>No</b>
<input checked="" type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>

**ID No:**

**Income Tax Reference No:**

**VAT Reference No:**

**PAYE Reference No:**

- If you are not registered for tax in South Africa, or the information is not available at the time of application, you can select “No” and you do not need to complete this information. Note, however, that applications for a decision under section 72 of the VAT Act can only be made by a vendor, or a class of vendors. Applications by a person that is not a vendor, will not be accepted.

### Application - Natural Person

**Details of Person:**

<b>Name of Natural Person :</b>	<input type="text" value="John Smith"/>		
<b>Postal Address:</b>	<input type="text" value="Private Bag X923"/>	<b>Residential Address:</b>	<input type="text" value="278 Bronkhorst Street"/>
	<input type="text"/>		<input type="text" value="Nieuw Muckleneuk"/>
	<input type="text"/>		<input type="text" value="Pretoria"/>
<b>City</b>	<input type="text" value="Pretoria"/>		
<b>Postal Code:</b>	<input type="text" value="0001"/>	<b>Residential Code:</b>	<input type="text" value="0181"/>
<b>Tel Code:</b>	<input type="text" value="012"/>	<b>Cell No:</b>	<input type="text" value="082-000-0000"/>
<b>Tel No:</b>	<input type="text" value="000-0000"/>		<b>EMail Address:</b>
			<input type="text" value="jsmith@test.co.za"/>

Are you a citizen of South Africa?  Yes  No

Are you registered in South Africa for tax purposes?  Yes  No

**ID No:**

9. Provide application detail. Select “Next” to proceed to the next step. If no application fee is received within 10 business days, the system will automatically reject your application.

### Application - Detail

**Prior Ruling Request(s)**

	Yes	No
Have you or a connected person to you or a member on behalf of your class, applied for a previous ruling on the same or substantially similar issue(s)?	<input type="radio"/>	<input type="radio"/>
Are there any parties connected to you that have entered into a similar transaction to which the ruling applies?	<input type="radio"/>	<input type="radio"/>
If yes, to the best of your knowledge are any of these parties being audited by SARS? Please provide details. <input style="width: 100%;" type="text"/>		
Have you obtained any view or opinion, preliminary or otherwise, whether from any third party or SARS in relation to this ruling application? If so, please attach it to the application documents.	<input type="radio"/>	<input type="radio"/>

**Please Note:** Your application will only be considered when proof of payment has been received. If payment is not submitted within 10 working days of applying for the ATR, your application will be rejected.

**Guidelines for Submitting Information:**

By law [section 76E(2)], you must submit the following information in connection with your proposed transaction and ruling request –

- A complete description of –
  - the proposed transaction;
  - the impact it may have upon your tax liability or the tax liability of any connected person in relation to you. This information must include any relevant information regarding the financial or tax implications of the proposed transaction;
  - any other transaction that you entered into before you filed the application or that you may enter into after filing your application, if that other transaction –
    - may have a bearing on the tax consequences of the proposed transaction; or
    - may be considered to be part of a series of transactions involving the proposed transaction;
- A statement of –
  - the specific ruling(s) being requested;
  - the relevant statutory provision(s) or issue(s);
  - the reasons why you believe the specific ruling(s) should be granted;
  - your interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities that you considered or are aware of, whether or not they support the specific

- Please indicate if you, a connected person, or a class member received either a VAT class ruling, a VAT ruling or a decision under section 72 previously on the same, or substantially similar issues.

10. In order to submit the application so that SARS can view it, please click “Submit”.

### Application - Summary

**Application**  
 Application Status: Saved  
 Subject: Gross Income Donations Tax

**Applicant**  
 Associated TaxPayer: None Name of Applicant: John Smith  
 Applicant Type: Personal

**Furnished By**  
 Name: John Smith Email: jsmith@test.co.za  
 ID Number: 1123242567087

Previous Details Close Submit Delete

11. You will now see your reference number and the status of your application. Under “Next Steps” you are advised to upload the relevant documents before paying the application fee.

### Application - Summary

**Application**  
 ATR Reference No: 2021000134  
 Application Status: Submitted - Payment Unconfirmed  
 Subject: Gross Income Donations Tax

**Applicant**  
 Associated TaxPayer: None Name of Applicant: John Smith  
 Applicant Type: Personal

**Furnished By**  
 Name: John Smith Email: jsmith@test.co.za  
 ID Number: 1123242567087

**Next Steps**

- Please select Upload Documents under Options to add your application documents
- After all documents have been uploaded the application must be paid.
- If application fee is paid via eFiling website then select 'Payments' under Options.  
 Alternatively, please deliver a cheque for the application fee to:  
 Attention – ATR, Khanyisa Building Ground floor, 281 Middle Street, Nieuw Muckleneuk, Brooklyn, Pretoria, 0081

NOTE: ATR fees cannot be electronically transferred via Internet banking into any SARS bank account.

**Options**

Payments Estimation History Print Upload Documents Payment History

Previous Details Close Withdraw

- Click on “Upload Documents”, select the location of the application document to upload, provide a description and click “Upload”.

## Upload Documents

### Application

ATR Reference No: 2021000134  
 Application Status: Submitted - Payment Unconfirmed

### Applicant

Associated TaxPayer: None      Name of Applicant: John Smith  
 Applicant Type: Personal

### Uploaded Documents List

Date	File Name	Description	Download File
No Records available for your selection.			

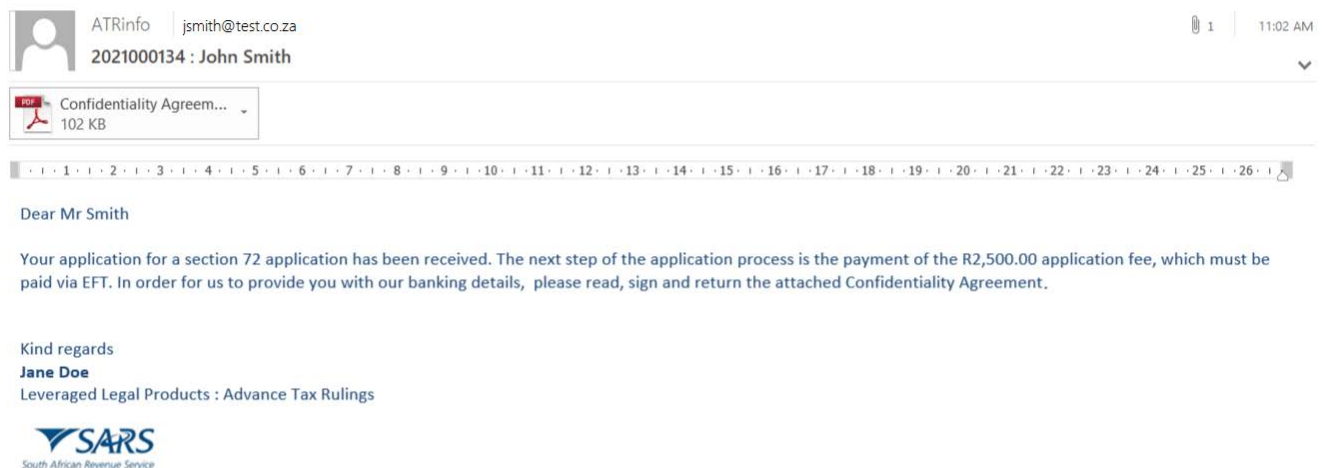
### Document Detail

Please note: Uploaded file may not be greater than 10MB.

File Path:  Application... site.docx

Description:

- The payment via eFiling functionality is not available anymore and will be removed in due course. Once the documentation has been uploaded, an email will be sent with the relevant banking details together with a confidentiality agreement for signature.



**Annexure B – Differences between a value-added tax ruling, an application for a decision under section 72 and an advance tax ruling**

	<b>VAT rulings</b>	<b>ATR</b>	<b>Section 72 decision</b>
<b>Submission of application</b>	By email to (VATRulings@sars.gov.za) or fax number (086 540 9390)	SARS eFiling.	SARS eFiling.
<b>Application fee</b>	None	Yes	Yes
<b>Pre-acceptance and compliance checklist to be completed by applicant</b>	No	Yes	Yes
<b>Form of application</b>	Complete <b>VAT301</b> form	Per SARS eFiling	Per SARS eFiling
<b>Content of Application</b>	Same as ATR except no “draft ruling” (section 41B of VAT Act read with section 79 of TA Act)	Comprehensive (Section 79 of TA Act)	Comprehensive (BGR 56)
<b>Pre-acceptance test</b>	Yes	Yes	Yes
<b>Ruling or decision applies to applicant</b>	The person or class member	The person or class member	The vendor or class of vendors
<b>Request for additional supporting documents</b>	Applicant has to submit documents within 14 business days, unless extension is granted	Applicant has to submit documents within the time as per the request	Applicant has to submit documents within the time as per the request
<b>Cost recovery fee</b>	None	Yes Varies on complexity of ruling	No
<b>Engagement contract</b>	No	Yes	No

<b>Status check</b>	Drafter listed in the letter of acknowledgment and <b>VATRulings@sars.gov.za</b>	eFiling	Drafter listed in the letter of acknowledgment and <b>VATSection72@sars.gov.za</b>
<b>Proposed ruling or decision</b>	Discuss with applicant if proposed ruling is negative	Discuss with applicant before finalisation	Discuss with applicant before finalisation
<b>Binding status</b>	Binding on the Commissioner	Binding on the Commissioner	Binding on the Commissioner
<b>Objection and appeal</b>	Not subject to objection and appeal, except for section 17(1) rulings	Not subject to objection and appeal	Not subject to objection and appeal





