

VAT RULING: VR xxx [or VAT CLASS RULING: VCR: XXX]

DATE: xxx

ACT : VALUE-ADDED TAX ACT, 1991 (the VAT Act)

SECTION : SECTION 16(2)(*g*)

SUBJECT : DOCUMENTARY PROOF REQUIRED TO CLAIM A DEDUCTION WHEN A VENDOR IS UNABLE TO OBTAIN THE REQUIRED DOCUMENTS UNDER SECTION 16(2) DUE TO CIRCUMSTANCES BEYOND THAT VENDOR’S CONTROL

Use the above statement to serve as a topic heading. If the heading above is insufficient and you want to use different words, limit the subject heading to 80 characters.)

*Preamble*

Use the exact wording as below for this part, modified only based on whether it is a class or private ruling.

This VAT [ruling/class ruling] is published with the consent of the Applicant(s) to which it has been issued. The ruling also constitutes a decision made in accordance with the Commissioner’s discretion under section 16(2)(*g*) and is binding only upon SARS and applies only to the Applicant and any Co-applicant(s). This ruling is published for general information and does not constitute a practice generally prevailing.

1. Summary

This part should explain very briefly in a few sentences and on a high level, what this ruling is about as indicated in the subject heading. You can use the wording above as an example of what is required.

This ruling deals with the application of section 16(2)(*g*) which provides that if a vendor was unable, due to circumstances beyond the control of that vendor, to obtain the required documentary proof to make a deduction of “input tax” or any other deduction, that vendor may apply to SARS for a ruling to allow for other acceptable documentary evidence to be held instead. It is a requirement that the request for such a ruling must be made no later than two months prior to the expiry of the five-year prescription period referred to in the proviso to section 16(3). SARS will only entertain such requests under very specific circumstances as a measure of last resort.

2. Relevant tax laws

Use the exact wording as below, followed by a list of the relevant provisions which apply as set out in the example below.

In this ruling, references to sections are to sections of the VAT Act applicable as at [date of the actual ruling of which this is the sanitised version]. Unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the VAT Act.

This is a ruling and a decision based on the Commissioner’s discretion on the application of the following sections of the VAT Act:

* Section 1(1) – definition of “input tax”; be specific if necessary – e.g., paragraph (*b*)]
* Section 15; [be specific if necessary]
* Section 16(2)(*a*), (*b*), (*c*), (*e*) or (*f*); [quote relevant sub-paragraph applicable in this case]
* Section 16(2)(*g*);
* Section 16(3)(*a*); [or other relevant sub-paragraph]
* The proviso to section 16(3); [quote specific sub-paragraph if necessary]
* Section 20(1); and
* Section 20(4).

3. Parties to the application

Under section 87(1) of the Tax Administration Act 28 of 2011, SARS must publish binding rulings for informational purposes to the general public in order to ensure a level playing field for all taxpayers. The ruling must be published in a form that does not reveal the identity of the Applicant or other parties to the transaction (confidential information). Therefore, exclude any confidential information from parts 3 and 4 of this template which may reveal the identity of the Applicant(s).

The relevant industry is required for internal purposes but will not be published if it reveals the identities of the parties.

Set out the information as per the example below to describe the Applicant(s) and mention the relevant industry concerned.

The Applicant: [E.g. A listed company incorporated in and a resident of the Republic]

In the case of a class, a description of the class. e.g. a group of companies incorporated and resident in the Republic, members of an association etc.

4. Background and facts

The background should provide sufficient contextual and factual information in a summarised form so that the reader can understand the situation of the vendor and the facts and circumstances concerning why there is a need for the ruling.

For example, include ‑

* the **pertinent facts** of the matter to allow the reader to understand the circumstances of the vendor(s) and the transaction(s) and the reason why the ruling is required;
* the **necessary context**. You do not need to mention specifics likes dates, places, descriptive details, amounts, etc. except where necessary and only insofar as it relates to the outcome or to provide the necessary context. (For example, if it relates to the calculation of the 5-year prescription period or the 2-month period before prescription when applying for the ruling under section 16(2)(*g*), then it may be necessary to mention the dates and to show the calculations proving that prescription does not apply.)
* the **industry** of the vendor/class should be mentioned.

As per paragraph 3 above, do not include any confidential information in Part 4 of this template which may reveal the identity of the Applicant(s).

The example below will give you an indication of the type of information that is required. Note the key points covered in the example which demonstrate that the requirements in section 16(2)(*g*) are met.

**Example**

The Applicant entered into a transaction whereby an extruder machine used in the manufacture of plastic bags was purchased from Company B. The machine was delivered two months after placing the order, but the tax invoice did not accompany the delivery. Only a delivery note was issued at the time. The supplier was insistent that the tax invoice would only be issued upon full payment of the purchase price and that such payment was to be made within 30 days of delivery by way of electronic funds transfer. The Applicant paid the full purchase price within the 30-day period allowed by Vendor B.

After several follow-ups regarding the issuing of the tax invoice by way of telephone calls, emails and other written correspondence by the Applicant’s bookkeeper during a period of six months after delivery of the machine, the Applicant had still not received the tax invoice. Eventually Vendor B did not respond at all to any communications in this regard, so the Applicant engaged the services of a tracing agency to follow the matter up. The agency established that Vendor B had in fact emigrated to Australia and had already closed the business two months prior to being appointed to look into the matter. Several attempts to contact Vendor B in Australia by the Applicant and the tracing agency proved unsuccessful.

The Applicant therefore applied to SARS for a ruling as contemplated in section 16(2)(*g*) to allow alternative documents to be held as acceptable proof for purposes of claiming an input tax deduction. The proof held by the Applicant included detailed records of phone calls made, emails and other correspondence sent to Vendor B, the report by the tracing agent and the proof of payment for the supply.

The Applicant applied for the ruling more than two months prior to the expiry of the five-year period referred to in the proviso to section 16(3) and no input tax deduction had been before making the ruling application.

5. Conditions and assumptions

Use the below statement if there are no additional conditions and assumptions. If there are any additional conditions or assumptions, then you can say *“The following additional conditions/assumptions apply:”* and then list them. You may have to include additional conditions or assumptions, for example, when the VAT treatment of a particular income stream is unclear or does not form part of the decision/ruling.

This VAT ruling/class ruling is subject to the Standard Terms, Conditions and Assumptions issued by the Commissioner, and the provisions of Chapter 7 of the Tax Administration Act, 28 of 2011 (the TA Act), excluding sections 79(4)(*f*), (*k*), (6) and 81(1)(*b*).

6. Ruling

Set the ruling out as per the items on which you have requested confirmation in the background and facts in the format indicated below. You can use the wording in the example below to make sure that you cover all the relevant parts that are necessary.

The ruling issued to the Applicant is as follows:

**Example continued from paragraph 4 above:**

The Commissioner is satisfied that all the requirements of section 16(2)(*g*) had been met by the Applicant. As such, the following documents may serve as acceptable proof under sections 16(2)(*g*) and 16(3)(*a*) that an input tax deduction may be made:

* Proof of payment for the supply; and
* The delivery note.

The Applicant must be in possession of the ruling and the specified acceptable documents at the time a return in respect of the deduction is furnished. The input tax deduction may be made in the tax period covering the date of issue of the ruling, or in a subsequent tax period, and is subject to the five-year prescription period referred to in the proviso to section 16(3).

7. Period for which this ruling is valid

Use the wording and format indicated below modified only by the inclusion of the relevant dates or whether the claim is for “input tax” or a different deduction against output tax. As the decision/ruling applies as permission for a specific deduction (subject to prescription), no specific validity period is stated.

This VAT ruling applies only in respect of the transaction(s) set out above and is –

7.1 valid from date of issue;

7.2 applicable to tax periods commencing on or after xxx; and

7.3 valid until the claim for a deduction of input tax (or a deduction if it is not “input tax”– as the case may be) prescribes in accordance with the proviso to section 16(3).

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