



# **Advance Tax Rulings System**

## **Invitation for Comment**



*South African Revenue Service*

## Glossary

In this invitation for comment unless the context indicates otherwise –

- “**ATR**” means Advance Tax Rulings;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**tax Act**” means the TA Act or an Act referred to in section 4 of the South African Revenue Service Act 34 of 1997, excluding customs and excise legislation;
- “**VAT**” means Value-Added Tax; and
- “**VAT Act**” means the Value-Added Tax Act 89 of 1991.

## 1. Introduction

The legislature created the legal framework for ATRs in 2006, in order to enhance the level of tax certainty, clarity and consistency regarding the interpretation and application of a tax Act. The ATR process is based on international best practice and has been operational for 14 years.

In keeping with SARS’s 2024 strategic objectives, SARS is currently reviewing the existing ATR process for binding private and binding class rulings to assess whether it can be improved and in so doing enhance taxpayer service levels and satisfaction.

The purpose of this document is to extend an invitation to all taxpayers, tax practitioners and professional associations to submit comments on the current ATR process and make recommendations for improvement that SARS can consider in conducting its review.

## 2. Binding private and binding class rulings

### 2.1 Process

Details on the ATR process can be found in section 75 to 90 of the TA Act and the *Comprehensive Guide to Advance Tax Rulings*, which can be accessed on the SARS website ([www.sars.gov.za](http://www.sars.gov.za)).

A brief summary of some of the important features are provided below.

- **Filing the application form.** The ATR process begins with the filing of the application forms and the payment of the application fee. The application forms must be submitted electronically and the payment of the application fee must also be made through the SARS eFiling system. An e-Application that is filed without payment of the application fee will expire within 10 business days. If there is uncertainty as to whether a rejection may apply, applicants are welcome to lodge the online application and upload the application documentation for evaluation before payment of the application fee.
- **Pre-screening checklist.** The first form that must be completed is the pre-screening checklist, which helps to ensure that the application is eligible for the ATR process and that it is not subject to a rejection.
- **Confirmation and reference number.** An electronic confirmation will be issued to the applicant once the applicant has successfully submitted the pre-screening checklist and the application forms. The confirmation will also include a reference number, which must be used in further communication with SARS on the application.

- **Supporting information and other required items.** Applicants are required, under section 79 of the TA Act, to provide detailed supporting information and other required items in connection with the application. The supporting information and required items must be submitted within five business days, unless an extension is granted in writing.
- **Review of application.** Once the supporting information and required items have been received, the application will be assigned to a specialist. The specialist will review the application more comprehensively to ensure that none of the rejection criteria apply. Upon completion of this review, the specialist will notify the applicant within five business days whether or not the application has been accepted.
- **Estimated cost recovery fee.** The specialist will provide the applicant with an online estimate of the cost recovery fee. Work in connection with the application cannot begin until the applicant has electronically accepted the estimated cost recovery fee and made the advance payment. The advance payment is calculated as a percentage of the highest estimated cost recovery fee (normally 20%).
- **Letter of Engagement.** Upon acceptance of the estimated cost, the applicant must indicate that he or she has read and accepted the *Letter of Engagement* by ticking the relevant box. The engagement letter is a binding contract between the applicant and SARS that sets forth the basic terms and conditions that govern the ruling process, including acceptance of the estimated cost recovery fee and agreement to make the advance and final payments.
- **Substantive review.** During the substantive review process, the specialist may request additional information from the applicant. A ruling application may still be rejected during the review process if it becomes apparent that an exclusion or rejection criterion is applicable.
- **Status checks.** The applicant will be able to check the status of the application on the eFiling system throughout the review process. Alternatively, the applicant can contact the specialist or email [ATRInfo@sars.gov.za](mailto:ATRInfo@sars.gov.za).
- **Notice of proposed ruling.** The applicant will be notified by the specialist upon completion of the review process. The proposed ruling may be positive or negative.  
  
The applicant will be provided with a draft ruling if the proposed ruling is positive. The applicant must review the draft ruling carefully for accuracy and inform SARS of any errors or omissions.  
  
The applicant will be notified and given an opportunity to discuss the matter with the specialist if SARS intends to issue a negative ruling.
- If a final decision is taken that the ruling, if issued, will be a negative ruling, the applicant will be given the option to –
  - request that the ruling not be issued and to withdraw the application; or
  - in certain limited cases, to amend the application to address those aspects of the proposed transaction that have given rise to the problem.
- **Issuance of the ruling.** Once all of the foregoing steps have been completed, the ruling will be issued to the applicant through eFiling. A request for a hard copy of the ruling may be made at the time the final ruling is issued.

- **Validity period of the ruling.** The ruling will be valid for a specific period. A reconfirmation can be requested, provided the facts have remained the same.

In a number of cases it is unnecessary to request an extension even if the period over which the ruling is applied exceeds the validity period. For example, if a ruling has been issued on section 12D of the Income Tax Act 58 of 1962 and the write-down of the value of the asset is limited to 5% per year, the ruling may be valid for five years, but the cost will be written off over 20 years. SARS will not change the write-down period after the ruling has expired unless circumstances would justify a withdrawal of the ruling. In that event, SARS will communicate the circumstances and its conclusions to the applicant as if the ruling were in force.

Notwithstanding the stated period of validity, a ruling will cease to be valid if a provision of the tax Act that materially affects the ruling is amended or a court overturns or modifies the interpretation in the ruling. SARS may also withdraw or modify a ruling.

- **Publication of the ruling in a sanitised form.** The final step involves the publication of the ruling in a sanitised form (published ruling).
- **Reconfirmations.** The following steps must be taken to apply for a reconfirmation:
  - Access the SARS eFiling system and apply online again following the normal application process.
  - Pay the application fee.
  - Within five business days, submit a reconfirmation request together with a motivation as to the reason why the reconfirmation should be granted. This motivation must address both the question of whether or not the background circumstances have changed and the reason why, in this instance, an extension is necessary from the applicant's perspective.

## 2.2 Binding effect

Binding private and class rulings only have a binding effect on SARS, and not on the applicant. The binding effect applies only to the extent the ruling is "applicable" under sections 83 and 84 of the TA Act to that applicant, co-applicant or class of persons. A third party may not rely on a ruling under any circumstances and may not cite private or class rulings in any proceedings, including court proceedings.

An applicant that disagrees with the ruling issued, is free to proceed with the transaction and apply its interpretation of the law. In the event that SARS takes an opposing view on assessment, which is in line with the ruling issued or withdrawn, the applicant will not be prejudiced and retains all remedies normally available to taxpayers that are aggrieved with an assessment issued by SARS.

An applicant cannot object or appeal against a ruling issued, or to be issued by the ATR unit. The applicant can, however, withdraw the application at any stage before the ruling is issued. SARS is required to inform an applicant in advance if a ruling to be made will be materially different from that which was applied for and to provide the applicant with reasonable opportunity to make representations.

## 2.3 Costs

A binding private and class ruling application is subject to a cost recovery fee. This fee is based on the number of hours it takes to consider the issues raised in the application, as well as any direct costs incurred in connection with the ruling. These direct costs could include, for example, travel costs or costs for expert services required on technical aspects of the proposed transaction. The ATR unit will engage with the applicant before any direct costs are incurred in order to reach an agreement on the need for such costs and the extent thereof.

The amount of the cost recovery fee depends on several factors. These factors typically include the number and complexity of the issues raised, the complexity of the proposed transaction itself and the volume of agreements, documents, and other information that must be reviewed in connection with the application. Requests from the applicant during the ruling process to amend the proposed transaction or rulings sought, will have an impact on the costs.

The fees are as follows:

<b>Categories of Applications</b>	<b>Estimated Fee Range</b>	<b>Estimation Deposit</b>	<b>Hourly rate</b>	<b>Estimated Time to Complete</b>
Standard	R10 000 to R35 000	R7 000	R650	20 business days
Involved	R35 000 to R70 000	R14 000	R650	45 business days
Complex	R70 000 to R105 000	R21 000	R650	60 business days
Extraordinary	Case-by-case	Case-by-case	R650	Case-by-case
Urgent	Case-by-case	Case-by-case	R1 000	Case-by-case

## 2.4 Publication in sanitised form

Rulings issued by the ATR unit are published in a sanitised form, which do not reveal the identity of any of the parties to the ruling or referred to in the ruling. The applicant is given a draft of the proposed sanitised ruling for review before publication. The applicant must review the draft carefully and inform the Commissioner of any confidential information that should be deleted.

Although SARS must consider the comments and edits proposed by the applicant, it is not obliged to accept them.

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

If a ruling has already been published on a similar transaction, SARS may consent to the non-publication of a sanitised version of the ruling on grounds of duplication.

Withdrawn ATR applications are not published because no ruling is issued.

It should be noted that binding private and binding class rulings are not “practice generally prevailing”, as defined and contemplated in section 1 of the TA Act.

## 2.5 Exclusions

Section 80(1) of the TA Act contains a detailed list of circumstances in which SARS may reject a ruling application. These include –

- matters that involve the interpretation of tax avoidance legislation;
- assessments currently under dispute with SARS;
- issues that are academic in nature;
- issues that are unduly time consuming or resource intensive;
- the application or interpretation foreign law; and
- hypothetical transactions.

The ATR process currently excludes “product rulings”, academic rulings and advance pricing arrangements (APAs).

## 2.6 Value-added tax rulings vs Advance tax rulings

The ATR process covers any provision of a tax Act. Accordingly, the provisions of the VAT Act are also covered under the ATR process.

Specific provision is made in section 41B of the VAT Act for VAT class rulings and VAT rulings. A ruling application regarding the interpretation or application of a provision of the VAT Act that qualifies for an ATR must be applied for under the ATR process and not under the provisions of section 41B of the VAT Act.

There are differences between ATRs and section 41B rulings, for example, section 41B rulings include rulings on transactions that have already occurred and there is no cost recovery fee. See the *VAT Rulings Process Reference Guide* (Issue 2), available on the **SARS website**, for more information on the VAT rulings process.

## 3. Comments invited

Taxpayers, tax practitioners and professional associations are invited to submit comments on the current ATR process and make recommendations for improvement. The scope of this invitation is limited to the ATR process and may include, but is not limited to the following:

- 3.1 The overall application process – Is the process efficient, effective and user friendly?
- 3.2 The eFiling interphase – Is the interphase user-friendly and effective?
- 3.3 Turnaround times.
- 3.4 Cost recovery and payment system.
- 3.5 The specific exclusions and no-rulings list.
- 3.6 Publication of sanitised rulings, secrecy and anonymity.
- 3.7 ATR service levels, professionalism, transparency and accessibility.
- 3.8 General effectiveness of the ATR process.
- 3.9 Impact of negative rulings, rights and legal remedies.
- 3.10 Reasons that would prevent a taxpayer from applying for a ruling.

Comments on this document may be sent to [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za) by 12 February 2021.

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**SOUTH AFRICAN REVENUE SERVICE**

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