

Advance Tax Ruling Application Procedure

Steps to follow when applying for ATR

In general, the ATR process involves a number of steps, beginning with the submission (filing) of an ATR application on line and ending with a ruling letter issued by the Legal and Policy Division: Advance Tax Rulings and its publication by the Commissioner in edited form. These steps are summarised below.

Submission (filing) of an ATR application

The ATR process begins with the submission of the application forms and the payment of the ATR application fee. The application forms and the application fee must be submitted electronically through the SARS eFiling system which can be accessed through the SARS website www.sars.gov.za.

The websites contain specific instructions in connection with each form with assistance to complete them.

It is the responsibility of the applicant to submit an application in time. In particular, the application must be submitted sufficiently in advance so as to ensure that the Commissioner has sufficient time to review it and issue the ruling letter, taking into account the number and complexity of the issues raised and the complexity of the proposed transaction.

In general, an application must be submitted at least 20 business days prior to:

- the date of the proposed transaction; or
- any other date or deadline you request or specify in your application,

whichever is earlier.

An application is not considered submitted (filed) until all three of the following requirements have been met:

- the applicant has paid the application fee;
- the applicant has signed and returned the Letter of Engagement; and
- the applicant has accepted the estimation and paid the estimation deposit.

A late application will not be accepted unless the applicant is able to demonstrate extraordinary circumstances in connection with the proposed transaction and sound reasons for the delay.

The applicant or representative must be registered on the eFiling system before he/she can submit an ATR application. If the applicant or representative is not yet registered, the eFiling site will provide step-by-step guidelines on how to register.

Note: You may not submit hard copy applications.

Pre-screening checklist

The first form that must be completed is the Pre-Screening Checklist. This checklist helps to ensure that the application is eligible for the ATR process and that it is not subject to exclusions. The pre-screening checklist must be completed correctly and accurately. Failure to do so (for example, by answering "no" to a question despite the applicability of the exclusion), may result in your application being rejected during the initial review without any refund of your application fee.

The pre-screening checklist also includes a statement of the standard terms and conditions that apply to your application. These terms and conditions relate to matters such as billing terms, your obligation to supply information in connection with your application, and the Commissioner's right to reject your application if any of the exclusions, refusals or rejections should be found applicable. You are required to accept these terms and conditions before proceeding to the next form (screen).

Contact details and other basic information

The remaining application forms permit the Commissioner to obtain contact information about the applicant or the specific class of persons. These forms also provide the Commissioner with a clear and accurate description of the class of persons subject to the proposed transaction and to identify the general areas of the Acts at issue in order to expedite the assignment and processing of the application.

Confirmation and reference number

Once the Pre-Screening Checklist and application forms are successfully submitted and the application fee paid, an electronic confirmation (confirmation) will be received. The confirmation will include a reference number for the application for use in all further communications in respect of the application.

Note: The Application fee must be paid within 10 days from application date. This can only be paid via eFiling ATR or a cheque delivered to the ATR Office, Khanyisa Building Ground floor, 281 Middel Street, Brooklyn, Pretoria, 0001. Please contact the ATR Unit on 012 422 8589 should you wish to obtain more information.

Form and content of the application

Application documentation is required to be completed in a specific format and specific information and details need to be supplied. All relevant documentation and additional information regarding Advance Tax Rulings and how to register for this service can be viewed on the ATR webpage.

The following information must be submitted in connection with the proposed transaction:

- a full and accurate description of the proposed transaction;
- a clear and accurate description of the taxpayer or specific class of persons if applicable (**Note**, where the identity of class members is not easily determinable from the application documents, the applicant may be requested to provide further particulars of the members);
- the impact the proposed transaction might have upon the tax liability of the taxpayer or specific class of persons. This information must include any relevant information regarding the financial or tax implications of the proposed transaction;
- any other transaction that was entered into before the application was filed or that you may enter into after filing the 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; and
 - 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 ruling(s) you are seeking;

- a detailed analysis and interpretation in the form of an opinion on relevant provisions of the law on which a ruling is required. Also provide results of research undertaken. The research might cover journal and textbook commentary and should include case citations;
- a draft version of the ruling letter itself; and
- a description of the information that you believe should be deleted from the final ruling letter before it is published in order to protect your confidentiality.

The above information is intended to ensure that the Commissioner has a full picture of the proposed transaction and the potential tax consequences for each of the parties involved.

Note: Any information submitted is subject to the secrecy provisions of the Acts and will be kept strictly confidential.

For more detail on this rule refer to the Comprehensive Guide to Advance Tax Rulings available on the ATR webpage.

Supporting information

Section 79 enables the Commissioner to request additional information from an applicant. This additional information must be submitted within five business days of the date of the request for the additional information unless an extension is granted in writing.

Notice of acceptance

Once the supporting information and other required submissions have been received, the application will be assigned to a ruling specialist. The ruling specialist will review the application more comprehensively to ensure that none of the rejection criteria applies. Upon completion of the review, the specialist will notify you within five business days of completion of the submission requirements whether or not your application has been accepted. If the application was accepted, this notice will indicate that the estimation of the cost recovery fee was published.

Pre-acceptance tests

ATR applications cannot be accepted, amongst others, if the topic of the ruling application is the subject of draft legislation or if the topic for the applicant (or connected person to the applicant) is the subject of a SARS audit at the submission date of the ATR application.

Under section 79(4)(n) and (o) of the TA Act, prospective applicants must also show that their tax affairs are in order before applying for a binding ruling through the ATR system. An applicant must submit a statement that to the best of its knowledge, its tax affairs (and in the case of a binding class ruling application, those of the class members, (if they are less than 10 members)) are in order as at the date of submission of the ruling application and that no registrations, returns or taxes due are outstanding.

Estimated cost recovery fee

The ruling specialist will also provide the applicant with an estimate of the anticipated cost recovery fee at this time. Work in connection with the application cannot begin until the applicant has accepted the estimated fee, signed and returned an engagement letter and made an advance payment equal to 20% of the higher amount of the estimated fee:

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

Note: The Estimation deposit must be paid within 15 days from estimation publication date. This can only be paid via eFiling ATR or a cheque delivered to the ATR Office, Khanyisa Building Ground floor, 281 Middlestreet, Brooklyn, Pretoria, 0001. Please contact the ATR Unit on 012 422 8589 should you wish to obtain more information.

Engagement Contract

Upon acceptance of the estimated fee, the applicant must sign an engagement letter which will be published on line. The engagement letter is a binding contract between the applicant and the Commissioner that sets forth the basic terms and conditions that govern the ATR process, including the acceptance of the estimated fee and agreement to make the advance payment and pay the full cost recovery fee. (See the Comprehensive Guide to Advance Tax Rulings available on the ATR webpage.)

Substantive review

Once these requirements have been satisfied, the ruling specialist will proceed with the substantive review of the application. During this process, the ruling specialist may request additional information from you in connection with your application.

Meeting with the ruling specialist

During the substantive review process, the applicant or the ruling specialist may request a meeting to discuss and clarify the issues raised or the proposed transaction itself.

Status checks

The applicant will be able to check the status of the ruling through the eFiling system throughout the substantive review process.

Notice of proposed specific ruling(s)

Upon completion of the review process, the applicant will be notified of the Commissioner's proposed specific ruling(s) in response to the issue(s) raised in the application. The proposed specific ruling(s) may be positive or negative.

Proposed positive specific ruling(s)

If the specific ruling(s) is/are positive, the applicant will be given a draft of the proposed ruling letter for review. At this stage, the applicant must review the draft ruling letter carefully for accuracy and inform the Commissioner of any errors or omissions the applicant believes may exist.

The applicant must also inform the Commissioner of any confidential information he believes should be deleted from the ruling letter prior to its publication in edited form.

Proposed negative specific ruling(s)

If the Commissioner intends to issue a negative specific ruling, the applicant will be notified and given an opportunity to discuss the matter with the ruling specialist. If a final decision is taken to issue a negative specific ruling, the applicant will be given the option to amend the application:

- to request that the ruling letter not be issued and that the Commissioner cease work on the application (request to withdraw application); or
- in certain limited cases, to reflect revisions to the proposed transaction that the applicant has made or will make in order to address those aspects of the original proposed transaction that gave rise to the problem.

If an applicant files a request to withdraw the application, he/she will remain liable for the cost recovery fee for the work done on the application. In particular, any fees paid will not be refunded and any outstanding fees incurred up to the date the amendment to discontinue are filed, must be paid.

Publication in edited form

If an ATR is issued, it may be published in edited form (published BPR or BCR). The applicant will be given a draft of the proposed published ruling for review prior to its release. The applicant must review this draft carefully and notify the Commissioner if he/she believes it contains any other confidential information that should be deleted. However, under section 87(4) of the TA Act, SARS's determination regarding the contents of the sanitised ruling is final.

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 a situation, SARS may publish a summary of the issues raised in the application and the ruling that were given.

If a ruling has already been published on a similar transaction SARS may consent to the non-publication of your sanitised ruling version on grounds of duplication. In this case, a ruling to this effect will be uploaded online and you will be requested to accept the decision or provide feedback or to withdraw the ruling application. If you withdraw the application you will be held liable for costs incurred up to date of withdrawal.

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

Issuance of the ruling

Once you have accepted the draft ruling and consented to the publication of the sanitised version of the ruling, SARS will upload the ruling online. You can request that the hard copy of the ruling be posted to the address provided in your application. This request must be received no later than the date upon which you approved the ruling.