



VAT Rulings Process

Reference Guide

Preface

This guide provides information and guidelines on the value-added tax (VAT) rulings process. It sets out the steps to be followed when applying for a VAT class ruling or a VAT ruling (collectively referred to as a VAT ruling, or a ruling, unless the context indicates otherwise) and explains certain terms. This guide does not deal with the process to be followed when applying for an advance tax ruling (ATR) that is, a binding class ruling or binding private ruling issued by the ATR unit, which process is also published on the **SARS website**. This guide also does not deal with the process to be followed in applying for a decision under section 72. See Binding General Ruling (BGR) 56: Application for a Decision under Section 72 and *VAT Section 72 Decision Process Reference Guide* on the **SARS website** in this regard. The issuing of a VAT ruling is governed by section 41B of the Value-Added Tax Act 89 of 1991 (VAT Act) read with Chapter 7 of the Tax Administration Act 28 of 2011 (TA Act).

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 23 of 2020, the Rates and Monetary Amounts and Amendment of Revenue Laws Act 22 of 2020 and the Tax Administration Amendment Act 24 of 2020, promulgated on 20 January 2021 in *Government Gazettes* (GGs) 44083, 44082 and 44080, 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 of the VAT Act unless otherwise indicated.

The previous edition of this guide has been withdrawn with effect from 4 November 2021.

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 72 Decisions Process Reference Guide*

For more information, you may –

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

Comments regarding this guide may be emailed 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 person that applies for a VAT ruling (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 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 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 class ruling, on behalf of the class. However, a list of the affected class members (including their VAT registration numbers where applicable) is required.

Application: An “application” is a written request for a VAT ruling. The application must be accompanied by a completed **VAT301** form and submitted by email to **VATRulings@sars.gov.za** or by facsimile to 086 540 9390.

ATR rules: The rules under Chapter 7 of the TA Act.

ATR: An advance tax ruling, that is, either a binding class ruling or a binding private ruling, issued under Chapter 7 of the TA Act by the ATR unit.

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: Means –

- shareholders, members, beneficiaries, or the like in respect of a company, association, pension fund, trust or the like; or
- a group of persons that may be unrelated but are similarly affected by the application of a tax Act to a specific or proposed 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 ruling, the interpretation and application of the tax laws are different for the co-applicants.

Letter of acknowledgment: A letter issued by SARS to the applicant once an application for a ruling has met all the pre-acceptance and compliance requirements, and does not involve an apparent issue for which the application may be rejected under the TA Act.

Negative VAT ruling: A VAT ruling that differs materially from the proposed ruling sought in the application.

Non-binding private opinion: A non-binding private opinion provides informal guidance on the VAT treatment of a particular set of facts and circumstances or transaction. A non-binding private opinion does not have “binding effect” upon SARS. A non-binding opinion is issued under the ATR rules. Therefore, the rejections under **5** apply.

POA: A Power of Attorney that should accompany an application where a representative applies for a VAT ruling 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. A specimen POA is available on the **SARS website**.

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 the TA Act.

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.

VAT301 form: An application form that accompanies the detailed VAT ruling application that is applied for under section 41B of the VAT Act. The **VAT301** form is available on the **SARS website**. A copy is also included for ease of reference at **Annexure B**.

VAT class ruling: A written statement issued by the Commissioner upon an application submitted under section 41B of the VAT Act read with Chapter 7 of the TA Act to a class of vendors or persons regarding the interpretation or application of the VAT Act. A VAT class ruling is binding on the Commissioner.

VAT ruling: A written statement issued by the Commissioner upon an application under section 41B of the VAT Act read with Chapter 7 of the TA Act regarding the interpretation or application of the VAT Act to a specific set of facts. A VAT ruling is binding on the Commissioner.

2. Value-added tax ruling or a decision

A decision should be distinguished from a VAT ruling, the main distinction being that a VAT ruling pertains to the interpretation of the VAT Act whereas a decision constitutes the exercising of a discretion (see section 9 of the TA Act). Certain decisions are subject to objection and appeal as set out in section 32 of the VAT Act and section 104 of the TA Act. The difference between a VAT ruling and a decision is illustrated by the examples set out below.

Example 1 – Application for a decision

Facts:

A vendor, registered on the invoice basis, makes a written application to be registered on the payments basis under section 15(2) by completing and submitting the prescribed VAT117 form.

Does the request qualify as an application for a VAT ruling or a decision?

Result:

The Commissioner is required to exercise discretion in directing that the vendor may be registered on the payments basis. The Commissioner will give effect to the decision by changing the accounting basis to the payments basis (should the vendor qualify to be on the payments basis) and issue a notification accordingly. The application qualifies as a request for a decision.

Example 2 – Application for a VAT ruling

Facts:

A vendor, supplying marketing services to a non-resident, wants to confirm whether VAT may be levied at the zero-rate under section 11(2)(l).

Does the request qualify as an application for a VAT ruling or a decision?

Result:

The question relates to the interpretation of the law with reference to a specific set of facts. The vendor may therefore apply for a VAT ruling.

In certain instances, the law provides guidance, but does not allow for discretion to be exercised. In these instances, the matter cannot be dealt with either as a decision or a VAT ruling.

Example 3 – Guidance in law

Facts:

A vendor supplies holiday accommodation that includes daily transport by road to points of interest, for a single consideration. The vendor wants to confirm how to attribute the consideration charged partly to the making of the taxable supply (the accommodation) and partly to an exempt supply (the transport of fare-paying passengers) under section 10(22).

Does the request qualify as an application for a VAT ruling or a decision?

Result:

The request does not qualify as an application for either a VAT ruling nor a decision. This is on the basis that there is no discretion afforded to the Commissioner as to how to determine the different parts of the consideration as contemplated in section 10(22).

3. Value-added tax rulings application process

The process for issuing a VAT ruling involves a number of steps, beginning with the submission of a VAT ruling application and ending with the issuing of a VAT ruling signed by a designated senior SARS official. This part deals with the acceptable form and content of a VAT ruling application.

3.1 Form and content of a valid value-added tax ruling application

A completed and signed **VAT301** form must accompany the VAT ruling application letter. Additional annexes listed in the **VAT301** form as well as any other relevant supporting documents must accompany the VAT ruling application.

A POA must accompany an application made on behalf of an applicant. A representative submitting an application on behalf of a class, should provide one POA signed by that representative, a list of the class members, their VAT numbers and one **VAT301** form. Ensure that the period for which the POA is valid is sufficient to accommodate the completion and issuing of the VAT ruling. A new POA will be required should the POA expire before the VAT ruling is ready to be issued. Applications made on a “no-name basis” will not be accepted.

The application must contain the minimum information prescribed under section 79(4) of the TA Act, excluding sections 79(4)(f), (k), (6) and 81(1)(b). The information required is set out below:

Section 79(4) of the TA Act	Requirements of the application letter
(a)	The applicant's name, VAT registration number (if applicable), postal address, email address and telephone number.
(b)	The name, postal address, email address and telephone number of the applicant's representative, if applicable.
(c)	A full and accurate description of the transaction (including financial implications).
(d)	The impact the transaction might have upon the tax liability of the applicant or class members or if relevant, any connected person in relation to the applicant or class member.
(e)	Any other transaction that was entered into before the application was filed or that the applicant may enter into 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.
(g)	The relevant statutory provision(s) or issue(s).
(h)	The reasons why the applicant believes the specific ruling(s) should be granted.
(i)	The applicant's interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities that the applicant considered or is aware of, whether or not it supports the specific ruling(s) the applicant is seeking.
(j)	A statement that none of the grounds for the rejection of the application under section 80 of the TA Act apply to the application.
(m)	<p>In the case of a VAT class ruling –</p> <ul style="list-style-type: none"> • a description of the class members; and • the impact the transaction might have upon the tax liability of the applicant or class members or, if relevant, any connected person in relation to the applicant or class member.
(n)	A statement confirming that the applicant(s) complied with any registration requirements under a tax Act with regard to any tax for which the applicant is liable, unless the application concerns a ruling to determine an applicant's liability to register under a tax Act.

(o)	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 VAT class ruling application, the class representative should provide the aforementioned statement on behalf of the class.
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The **VAT301** form requires the applicant to declare that, amongst others, the –

- rejections under section 80 of the TA Act do not apply (see **5.1** and **5.2**);
- applicant has complied with all the relevant tax obligations; and
- details contained in the application are true and accurate.

An application to use an alternative method of apportionment, must include the following information:

- A complete description of all the business activities, including whether or not income was received from such activities.
- Details of specific transactions that may impact SARS’s decision-making process (for instance, where interest is earned from investment or lending activities, the interest rates applicable or alternatives to be used if necessary in specific circumstances).
- A list of all income streams, including the value thereof, and whether or not such income results from various business activities carried on by the business. Also indicate whether those income streams are treated as taxable, exempt or out-of-scope for VAT purposes.
- Any possible changes to the business activities or income streams in the past or near future that may have an impact on the apportionment ratio.
- Annual Financial Statements for the past three years.
- A list of all expenses (including the values thereof) that are –
 - directly attributed (that is, being applied wholly) to the making of taxable supplies;
 - directly attributed (that is, being applied wholly) to the making of exempt supplies or for other non-taxable purposes (including income received that does not result from a supply made);
 - subject to the requested apportionment method, that is, mixed expenses.
- A detailed explanation as to why –
 - apportionment is required, that is, why expenses are regarded as being for mixed purposes;
 - the standard turnover-based method in Binding General Ruling (BGR) 16 “Standard Apportionment Method” is considered not to be fair and reasonable in the circumstances, or why it is inappropriate;
 - the proposed alternative method or methods that are considered to be more fair and reasonable or appropriate taking into account the specific circumstances the enterprise.
- A clear indication as to the preferred apportionment method and a detailed analysis of every inclusion or exclusion in that method.

- The outcomes and analysis of at least two other apportionment methods considered (other than the one in BGR 16) or an explanation as to why any other methods of apportionment commonly used by vendors cannot be applied.
- Detailed calculations of the apportionment ratio for three consecutive years (from the latest information available) for the standard turnover-based method and the two alternative apportionment methods that have been considered. The calculation must clearly indicate how the numbers or values used in the calculations are determined.
- A statement in the ruling application as to whether input tax has been deducted in past tax periods using any method other than the one prescribed in BGR 16, and if so, from when that method was applied.
- A copy of any previous ruling(s) issued within the past five years permitting the vendor to use an alternative method of apportionment.

In the case of an application for re-confirmation of a previous apportionment ruling, the applicant is still required to submit Annual Financial Statements and calculations for the last three years. Where the other points listed above are covered in previous applications, the current application should refer to the previous applications, and attach same. However, should any of the points listed above not be covered in previous applications, the information must be submitted as part of the current application.

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 course of administering any tax Act.

3.2 Submitting the application

All applications for VAT rulings and non-binding private opinions must be submitted via e-mail to **VATRulings@sars.gov.za** or facsimile to 086 540 9390. Submissions received by any other means, for example, submissions dropped off at SARS branch offices or e-mailed to any SARS official, will not be accepted. A VAT ruling or non-binding private opinion will only be issued in respect of the interpretation of the law, in respect of a specific set of facts, circumstances or transactions.

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.

4. Receipt of value-added tax ruling applications

On receipt of a VAT ruling application, SARS will conduct certain pre-acceptance and compliance requirements to determine whether the application can be accepted, whereafter the allocation process can commence.

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 79(4) of the TA Act.
- (b) Confirming that the **VAT301** form has been completed and signed and 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 failing 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) a **VAT301** form has not been submitted, or is incomplete; and
- (vi) the applicant has outstanding taxes or returns (see also **5.2**), and has not submitted proof that arrangements acceptable to SARS have been made in this regard.

5. Rejected applications

A VAT ruling application **may** be rejected if –

- (a) the applicant fails the pre-acceptance and compliance process (see **4.1**). In this instance, the application will be rejected and the applicant will be notified accordingly. The applicant can, however, rectify the non-compliance and resubmit the application;
- (b) the application deals with a matter listed in section 80 of the TA Act (see **5.1**), including matters listed in a public notice (the Notice)¹ published under section 80(2) of the TA Act (see **5.2**); or
- (c) any additional information requested is not submitted within 14 business days (unless a further period is agreed upon).

In the case of the aforementioned bullet points (a) and (b), 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 bullet point (c), where information is not submitted within the agreed timelines, a rejection letter will also be issued.

Applications for a VAT ruling under section 41B, which also include a request for a decision under section 72, will only be considered to the extent of the request made under section 41B. A separate application for a section 72 decision must be made via eFiling. See BGR 56 and *VAT Section 72 Decision Process Reference Guide* on the **SARS website**. Also see **Annexure A** for the differences between a VAT ruling, a decision under section 72 and an ATR.

¹ Currently published as Public Notice 748 in *Government Gazette* 40088 dated 24 June 2016, including any further Notices or updates issued (the Notice).

5.1 Rejections under section 80(1)

Applications pertaining to the general application of the law as opposed to an interpretational difficulty or uncertainty in relation to a specific set of facts will generally not be accepted. This also applies to matters already explained in official publications, unless the said publication does not cater for the issue in the application. The following must therefore be considered before applying for a ruling:

- Is the answer to your question not clearly stated in existing official publications?
- Is the issue uncertain or complex in nature?
- Is it necessary to have formal legal certainty in the form of a VAT ruling?

A VAT ruling may be rejected under the following subsections of section 80:

Section 80(1)	
(a)	<p>An application requesting an opinion, conclusion or determination regarding –</p> <ul style="list-style-type: none"> (i) the market value of an asset, for example, confirmation of the consideration in respect of the supply of a property; (ii) the application or interpretation of the laws of a foreign country, for example, confirmation that a person is resident of a foreign country; (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant or a class member: Under the VAT Act, the consideration is deemed to be the open market value in certain instances. A ruling 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; (iv) the constitutionality of a tax Act, for example, any application containing a statement or assumption that a tax law is unconstitutional; (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"> • a transaction where all the parties to the transaction are not identified; • a future endeavour with no specific plans for implementation; (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; (vii) whether a person is an independent contractor, labour broker or personal service provider; or (viii) an application that is submitted for academic purposes, for example, an application by a student relating to a thesis.

<p>(b)</p>	<p>An application that contains –</p> <ul style="list-style-type: none"> (i) a frivolous or vexatious issue, for example where the answer is apparent under the plain language of the law; (ii) alternative courses of action by the applicant or class member not seriously contemplated, for example applications – <ul style="list-style-type: none"> • seeking advice on how a transaction should be structured; • requesting SARS to suggest different alternatives which would not result in a negative ruling; (iii) an issue that is the same as or substantially similar to an issue that is – <ul style="list-style-type: none"> • currently before SARS in connection with an audit, investigation or other proceeding involving the applicant or a class member or any connected person in relation to the applicant or any class member; • the subject of a policy document or draft legislation that has been published; or • subject to dispute resolution under Chapter 9 of the TA Act. <p>A VAT ruling 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 ruling 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>
<p>(c)</p>	<p>An application that involves the application or interpretation of a general or specific anti-avoidance provision or doctrine.</p>
<p>(d)</p>	<p>An application that involves an issue –</p> <ul style="list-style-type: none"> (i) that is of a factual nature: <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. Some examples are applications seeking confirmation that –</p> <ul style="list-style-type: none"> • a project constitutes a “foreign-donor funded project” as defined in section 1(1) of the VAT Act; • a payment is made in relation to a national housing programme contemplated in the Housing Act 107 of 1997; • a particular payment constitutes a “donation” or “grant” as defined in section 1(1) of the VAT Act; • a non-resident carries on an “enterprise” as defined in section 1(1) of the VAT Act, through a fixed establishment in the Republic;

	<ul style="list-style-type: none"> • an activity constitutes a “welfare activity” as contemplated in Government Notice 112 published in the <i>Government Gazette</i> 27235 on 11 February 2005; • a supply constitutes “electronic services” as determined by the Minister of Finance in a Regulation; • a supply constitutes “telecommunication services”; • a person is an “intermediary” as defined in section 1(1); • a person falls within a “group of company” as defined in the Electronic Services Regulations;² • a supply is made or not made; • a person is the “recipient” of a supply; <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"> • the future action of another party which is not a co-applicant to the application; • future events beyond the control of the applicant or another party to the transaction; <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 ruling;</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 ruling.</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"> • the resolution depends on industry research to be conducted; • engagement with National Treasury, industry bodies and related stakeholders are required; or • the application involves voluminous supporting documentation to be taken into account.

² At the time of this publication, the Regulations have been amended by GN 429 *Government Gazette* 42316 of 18 March 2019.

(f)	<p>An application that requests SARS to rule 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"> • <i>Zandberg v van Zyl</i>;³ • <i>Commissioner of Customs and Excise v Randles, Brothers & Hudson Ltd</i>;⁴ and • <i>Erf 3183/1 Ladysmith (Pty) Ltd and another v CIR</i>.⁵
Section 80(2)	
	<p>The Commissioner may publish by public notice a list of additional considerations in respect of which the Commissioner may reject an application (see 5.2).</p>
Section 80(3)	
	<p>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 6.3), for example, where the applicant has been requested to submit further information within 14 business days, and the applicant either –</p> <ul style="list-style-type: none"> • fails to provide the information within the said days; or • fails to request an extension of days for submission of the additional information.

5.2 Rejections in terms of the Notice

The Notice that allows for the rejection of applications contains certain aspects of which the following are relevant to VAT rulings:

- (a) The liability for VAT of a supplier of goods or services that is not a party to the application.

In order for the request to be considered, the supplier must be the applicant, or a co-applicant to the VAT ruling application and a POA is required for each party.

- (b) The entitlement to deduct input tax in respect of goods or services acquired by a person that is not a party to the application.

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.

- (c) 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.

- (d) The application of section 8(15) and whether a supply of goods or services constitutes a single supply.

³ 1910 AD 202 at 209/302 at 309.

⁴ 1941 AD 369.

⁵ 1996 (3) SA 942.

- (e) 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.
- (f) Confirmation that a supply of accommodation or any right to occupy a building or part thereof, constitutes “commercial accommodation”.
- (g) 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.
- (i) 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.
- (j) Applications pertaining to the tax consequences of transactions contained in agreements which have already been concluded, except requests for –
 - (i) rulings or class rulings under section 41B of the VAT Act; or
 - (ii) the extension of the validity of a ruling 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.
- (k) 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.

6. Allocation of a successful application

6.1 Categories of value-added tax rulings

Once a VAT ruling application passes the pre-acceptance and compliance requirements listed above, the allocation process will commence. The VAT ruling application will be placed in a specific category, that is, Basic, Involved or Complex. These categories indicate the complexity level of the VAT ruling application as well as the estimated number of business days it may take to issue the VAT ruling, and are as follows:

Category	Estimated time to complete
Basic	23 business days
Involved	52 business days
Complex	69 business days

It is important to take note of the above timelines when applying for a VAT ruling. 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, 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 **6.3**).
- The business days commencing from the request for a meeting (see **6.4**) until and including the business day following the meeting (unless further information has been requested at the said meeting).

New VAT ruling applications received during the period 17 December to 15 January will only be considered from 16 January onwards.

Whilst every endeavour is made to adhere to the estimated timelines to consider, finalise and issue VAT rulings, delays may occur because of capacity constraints, unforeseen circumstances and unexpected complexities related to the application that may have only been 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 VAT ruling may not be finalised within the estimated timelines.

6.2 Letter of acknowledgement

A letter of acknowledgement will be issued by SARS 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 VAT ruling (the drafter).
- The category of the VAT ruling application (see **6.1**) and the estimated completion date.

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

Should your application meet the initial pre-acceptance and compliance requirements, you will be informed via e-mail that the matter has been received, and is being processed.

The letter of acknowledgment will be issued within 7 days from the date the application has met the initial pre-acceptance and compliance requirements. 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 the letter of acknowledgment which is the date the application has been accepted (and not the date that the application was submitted).

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

An application may still be rejected during the review process should it subsequently become apparent that one or more of the exclusions apply. See **5.1** to **5.2**.

6.3 Request for additional information

In certain instances, additional information may be requested under section 79(5) of the TA Act in the letter of acknowledgment. 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 VAT ruling 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 or the VAT ruling may be treated as a new application. Unexpected complexities arising from the additional information received may necessitate the re-categorisation of the application (see 6.1) or allocating another resource to the matter. Applicants will be informed accordingly.

6.4 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 6.5). As stated above, the additional information must be submitted within prescribed timelines. Failure to submit the required information within the period stipulated in the request for additional information may result in the application being rejected under section 80(3) of the TA Act.

6.5 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 ruling application has been accepted and allocated (that is, before the applicant has received the letter of acknowledgement referred to in 6.2). It will also be premature for SARS to indicate whether a VAT ruling outcome will be positive or negative, until the internal review processes have been finalised (see 6.7).

6.6 Negative value-added tax rulings

SARS will provide an applicant with an opportunity to make representations, before issuing a negative VAT ruling. The purpose of the consultation 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 the negative ruling consultations, it becomes apparent that the facts are different from those originally submitted during the VAT ruling application process, the applicant may be required to submit a new ruling application. See 6.3. The original application will accordingly be rejected on this basis.

The negative VAT ruling will generally be issued subsequent to the aforementioned representations. In respect of past and on-going transactions, the applicant may not withdraw the ruling application, subsequent to these consultations and representations.

A person cannot appeal against a negative ruling, or request a different outcome based on –

- the same set of facts.
- a change in the law where the negative ruling was based on the law applicable at the time the negative ruling was issued.

An objection may only be lodged against the Commissioner's refusal to approve a method for determining the ratio contemplated in section 17(1). In respect of any other matter, in the event that you are not satisfied with the view contained in the ruling provided to you, you may under the Promotion of Administrative Justice Act 3 of 2000 request the Commissioner to provide written reasons for the ruling provided. If, after receiving the Commissioner's reasons for the ruling, you are still dissatisfied with the outcome, you may approach the High Court and ask for the matter to be reviewed.

6.7 Issuance of a value-added tax ruling

A VAT ruling 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 VAT ruling is not provided to the applicant before issuing the VAT ruling.

All VAT rulings issued must be signed by a designated senior SARS official in the official Rulings area. Furthermore, it must contain a statement identifying it as a VAT class ruling or a VAT ruling. Any VAT ruling not signed by a senior SARS official, or not containing the said statement, is invalid and not binding on the Commissioner. An oral statement does not have a binding effect under section 82 of the TA Act.

The VAT ruling will be sent to the address and email address that has been provided in the VAT ruling application.

7. Effect of a value-added tax ruling

7.1 Binding nature of a value-added tax ruling

A VAT ruling 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 ruling that was issued in connection with your application. You cannot object or appeal against a negative ruling (except to certain limited instances referred to in **6.6**).

Should you decide to not implement the VAT consequences in accordance with the ruling issued, and you are subsequently audited and assessed by SARS based on the content of the ruling issued, the remedies under the objection and appeal process in relation to the verification, audit or inspection are available to you.

7.2 The applicability of a value-added tax ruling and a non-binding opinion

A VAT ruling only applies to a person or class of persons if –

- the person or class member is an applicant or an affected class member identified in the VAT ruling;
- the provision(s) of the VAT Act at issue is or are the subject of the VAT ruling;
- 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 VAT ruling;
- the applicant's set of facts and circumstances or transaction falls entirely within the effective period for the effective period of the VAT ruling; and
- any assumptions made or conditions imposed by SARS in connection with the validity of the VAT ruling have been satisfied or carried out.

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

A non-binding private opinion does not have the binding effect envisaged in section 88 of the TA Act, but may be cited by the person, to whom the opinion was issued in any proceedings, including court proceedings.

7.3 Value-added tax ruling ceasing to be binding

A VAT ruling may in certain instances, cease to be binding on the Commissioner and be ineffective, or become *void ab initio* (from the outset).

Some examples of instances in which VAT rulings 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 ruling is based;
- (b) fraud, misrepresentation or non-disclosure of material facts; and
- (c) a condition or assumption stipulated by SARS in the VAT ruling is not met.

Some examples of instances in which a VAT ruling will lose its binding effect are subsequent –

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

The VAT ruling loses its binding status if any of the events above occur, regardless of whether or not SARS publishes a notice of the withdrawal or modification.

8. 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 – Differences between a value added tax ruling, an application for a decision under section 72 and an advance tax ruling

	VAT rulings	ATR	Section 72 decision
Submission of application	By email to (VATRulings@sars.gov.za) or fax number (086 540 9390)	SARS eFiling.	SARS eFiling.
Application fee	None	Yes	Yes
Pre-acceptance and compliance checklist to be completed by applicant	No	Yes	Yes
Form of application	Complete VAT301 form	Per SARS eFiling	Per SARS eFiling
Content of Application	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)
Pre-acceptance test	Yes	Yes	Yes
Ruling or decision applies to applicant	The person or class member	The person or class member	The vendor or class of vendors
Request for additional supporting documents	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
Cost recovery fee	None	Yes Varies on complexity of ruling	No
Engagement contract	No	Yes	No

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

