



SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO. 36

DATE: 24 January 2007

ACT : INCOME TAX ACT, 1962 (the Act)
SECTION : SECTION 76I
SUBJECT : SCOPE AND IMPACT OF SECTION 76I UPON WRITTEN STATEMENTS ISSUED BY THE COMMISSIONER PRIOR TO 1 OCTOBER 2006

1. Introduction

This Interpretation Note discusses and clarifies the scope of section 76I of the Act and its immediate impact upon written statements issued by the Commissioner for the South African Revenue Service (the Commissioner) in interpreting and / or applying the provisions of the Act prior to the effective date of the new Advance Tax Ruling System (ATR System).

2. General

In terms of section 12(2) of the Second Revenue Laws Amendment Act, 2005, the President, by proclamation in the *Government Gazette* No 29263 of 29 September 2006, determined 1 October 2006 as the date on which the ATR System provided for in Part IA of Chapter III of the Act, came into operation (effective date). This proclamation applies to sections 76B to 76Q and section 76S of Part IA. It thus brings into effect, amongst other things, the provisions governing binding general rulings (section 76P), binding private rulings (section 76Q), and nonbinding written opinions (section 76I), but not the provisions governing binding class rulings (section 76R).

3. Section 76I

Section 76I(1) authorises the Commissioner to issue nonbinding written opinions to persons regarding the tax treatment of a particular set of facts and circumstances or a particular transaction. As the name indicates, these rulings are not binding upon the Commissioner (section 76I(2)).

Section 76I(4) authorises the Commissioner to prescribe, in writing, the extent to which any written statement issued by the Commissioner prior to the effective date (prior written statement), may have binding effect. Section 76I(5) further provides that, except to extent that the Commissioner provides otherwise, prior written statements are to be treated as and have the effect of nonbinding private opinions.

4. The informal system in place prior to the ATR system

As the *Discussion Paper on a Proposed System for Advance Tax Rulings* explained, South Africa did not have a formal tax rulings system prior to the introduction of the new ATR System. However, taxpayers often approached SARS for guidance or views on the interpretation of certain provisions of the legislation administered by SARS and in certain circumstances SARS complied with these requests.

Because there was no statutory basis for these views, they were not binding on either SARS or taxpayers.

5. Scope and impact of section 76I(4) and (5)

Section 76I(4) and (5) only apply to written statements that were issued under this informal system prior to the effective date of the new ATR System. Thus, except to the extent the Commissioner prescribes otherwise in accordance with section 76I(4), the provisions of section 76I(5) will simply confirm the status that these prior written statements have always had.

6. Prior written statements not affected by section 76I

Section 76I does not apply to the following categories of prior written statements:

- a) Any prior written statements issued under the provisions of Chapter III of the Act.
- b) Any prior written statements through which the Commissioner conveyed a decision to approve a fund as a pension fund, provident fund or retirement annuity fund under the provisions of section 1 of the Act.
- c) Any prior written statements through which the Commissioner conveyed a decision to approve an organisation as contemplated in sections 10(1)(cA), 10(1)(cH), 10(1)(cM) and 10(1)(cN) of the Act.
- d) Any prior written statement issued in connection with the classification of a company as either public or private under the provisions of section 38 of the Act.
- e) Any prior written statement, issued in respect of an event, transaction or other incident that occurred in the past, conveying a decision of the Commissioner in terms of which the Commissioner was required to exercise a discretion specifically provided for in the Act. In respect of these prior written statements the normal provisions regulating the withdrawal of the statements will be applicable, for example, section 3(2) of the Act.

In each case, these prior written statements will retain the status which they had prior to the effective date.

7. Confirmation of prior written statements

Taxpayers who have received written statements under the prior informal system may request that the Commissioner grant these prior written statements binding effect in terms of section 76I(4). The procedures and requirements applicable to these requests are set out in Interpretation Note No. 37.

In general, the Commissioner may grant a request or may withdraw or modify the prior written statement to the extent that it was issued in error.

SECTION 76P STATEMENT

This written statement is a binding general ruling issued in accordance with section 76P of the Act.

The provisions of the Act that are the subject of this binding general ruling are the provisions of section 76I.

This binding general ruling is effective until formally withdrawn or amended.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE

WITHDRAWN 18 FEBRUARY 2013