



SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE: NO. 37

DATE: 24 January 2006

ACT : INCOME TAX ACT, 1962 (the Act)
SECTION : SECTION 76I(4) AND (5)
SUBJECT : PROCEDURES FOR REQUESTING BINDING EFFECT IN RESPECT OF WRITTEN STATEMENTS ISSUED BY THE COMMISSIONER PRIOR TO 1 OCTOBER 2006

1. Purpose

This Interpretation Note sets forth the procedures for requesting that binding effect be given to written statements that were issued by the Commissioner for the South African Revenue Service (the Commissioner) prior to 1 October 2006 (prior written statements), being the effective date of the new Advance Tax Ruling System (ATR System). This Interpretation Note should be read in conjunction with Interpretation Note No. 36: "Scope and Impact of Section 76I upon Written Statements issued by the Commissioner prior to 1 October 2006".

The procedures set forth in this Interpretation Note only apply to prior written statements issued in respect of the interpretation and application of the Act.

2. Background

Section 76I(1) of the Act authorises the Commissioner to issue nonbinding private opinions regarding the tax treatment of a particular set of facts and circumstances or a particular transaction. In terms of section 76I(2), these opinions are not binding upon the Commissioner.

Section 76I(5) provides that prior written statements are to be treated as and have the effect of nonbinding private opinions except to the extent that the Commissioner provides otherwise. As explained in Interpretation Note No. 36 this provision simply confirms that status that these prior written statements have always had under the Act.

Section 76I(4) authorises the Commissioner to prescribe, in writing, the extent to which any prior written statement may have binding effect as contemplated in section 76H of the Act.

3. Procedure

The procedure that must be followed is the same as for binding private rulings (as set out in section 76E of the Act) with the exception that no fees will be payable.

In order to request that a binding effect be given to a prior written statement, the recipient of that view ("recipient") must –

- a) complete form ATR 1 in full (**see annexure**);
- b) attach all documentation referred to under the heading **Annexures** on page 2 of the form; and
- c) submit the completed form, together with the annexures, to the Private Rulings Section.

All requests must be submitted either by e-mail (atrinfo@sars.gov.za) or by fax (012 422 4923).

Form ATR 1 is available on the SARS Website (www.sars.gov.za) as well as the ATR Service site accessible through SARS eFiling (www.efiling.gov.za).

The procedures in respect of prior VAT rulings are dealt with in Binding General Ruling (VAT) No. 2.

4. Deadline

All requests must be received by the Private Rulings Section by **30 June 2007**. **There are no exceptions to this requirement.** Any requests received after this date will be declined and must be submitted through the formal system for requesting a binding private ruling.

5. Fees

There are no fees payable for this service.

6. Requirements to obtain a ruling

- a) Proposed transaction

Only written statements in respect of **proposed transactions** will be considered. Accordingly, a recurring transaction for which a prior written statement has been issued can qualify for a binding private ruling provided such transaction will recur in future.

- b) Full disclosure

Requests for binding effect will not be granted unless **all** the parties and relevant facts and circumstances and/or details of the particular transaction at issue in the prior written statement, are fully disclosed.

Requests will not be granted in connection with prior written statements that were originally issued on an "anonymous" basis or in respect of generic or

hypothetical transactions or fact patterns unless these requirements are satisfied.

c) Additional information or documentation

The Commissioner may request additional information in connection with any request. Failure or refusal to comply will result in the rejection of the request.

7. Prior written statements not subject to section 76I

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. They do 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. Requests should not be submitted in respect of these statements.

8. Nonbinding private opinions requested or issued on or after 1 October 2006

The provisions of section 76I(4) and (5) are limited to prior written statements. They do not apply to nonbinding private opinions requested or issued under the new provisions of section 76I on or after 1 October 2006. **Requests that such opinions be granted binding status will not be accepted under any circumstances.**

9. Queries and additional information

Any queries in connection with this Interpretation Note should be submitted to the Private Rulings Section at atinfo@sars.gov.za.

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 30 June 2007.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE

WITHDRAWN ON 8 FEBRUARY 2013