
SOUTH AFRICAN REVENUE SERVICE

**COMPREHENSIVE GUIDE
TO
ADVANCE TAX RULINGS**

Another helpful guide brought to you by the
South African Revenue Service



www.sars.gov.za

Comprehensive Guide to Advance Tax Rulings

Foreword

This guide will –

- assist you with filing an application for an advance tax ruling (ATR); and
- provide you with an overview of the ATR system and process.

This guide –

- will not elaborate on the specific technical and legal detail that is associated with tax;
- should not be used as a legal reference; and
- is not a binding class, general or private ruling in terms of Chapter 7 of the Tax Administration 28 of 2011

Should you require information on any aspect of taxation that is not specifically related to an ATR or the ATR Unit, you may –

- visit your nearest SARS branch office;
- contact the SARS National Contact Centre –
 - if calling locally, on 0800 00 SARS (7277); or
 - if calling from abroad, on +27 11 602 2093;
- visit the SARS website at **www.sars.gov.za**; or
- contact your own tax advisor or tax practitioner.

A list of Frequently Asked Questions about Advance Tax Rulings is available on the SARS website.

Comments or suggestions on this guide may be sent to **ATRInfo@sars.gov.za**.

Prepared by

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
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Glossary

Abbreviations for the meaning of words, phrases or concepts are stated below, unless the context indicates otherwise:

ATR	advance tax ruling
ATR Unit	Advance Tax Rulings Unit of the Legal and Policy Division: Interpretation and Rulings
ATR system	binding ruling application process and procedures
BCR	binding class ruling
BPR	binding private ruling
BGR	binding general ruling
eFiling	SARS electronic filing system
Income Tax Act	Income Tax Act 58 of 1962
section	section of the TA Act
TA Act	Tax Administration Act 28 of 2011
VAT Act	Value-Added Tax Act 89 of 1991

1. Introduction

This guide provides information on the binding ruling application process and procedures (ATR system), its purpose and on which tax matters binding rulings may not be issued.

1.1 Purpose, benefits and other considerations

The purpose of the ATR system is to promote clarity, consistency and certainty regarding the interpretation or application of a tax Act. A binding ruling application can only be accepted if the proposed transaction to which the interpretation is to apply will be concluded in the future. There is no exception to this rule.

A binding ruling is intended to provide clarity and certainty on how SARS interprets and applies the various tax laws to a proposed transaction. The ruling will be binding upon SARS when you are assessed in connection with that proposed transaction, unless you have not disclosed all the facts in connection with your proposed transaction or have not concluded the transaction as described in your application. The scope and limitations of this binding effect are detailed in **5**.

The application procedures are prescriptive and structured. They are not designed to provide answers to taxpayers' general tax queries regarding their current tax affairs or general questions about tax laws such as administrative or procedural matters (where, when or how to file returns).

The application process can be relatively lengthy, so you will have to submit your application timeously.

Before applying for a binding ruling, please consider the following questions:

- Is the answer to your question not clearly stated in existing information sources?
- Is the issue uncertain or complex in nature?
- Does the issue involve a significant amount of tax?
- Is it necessary to have formal legal certainty in the form of a binding ruling?
- Will you be able to meet the costs of obtaining a binding ruling?
- Have you allowed enough time for the binding ruling to be issued before the commencement date of your proposed transaction?

The time period required to issue a binding ruling is normally a minimum of 20 business days.¹ You should also allow time for possible delays during the application process, for example, if further particulars are required in addition to the information you provided.

If you decide to apply for a binding ruling it is recommended that you seek the assistance of an accountant, lawyer or other tax professional.

¹ The business days start when you have accepted the online notification of the cost recovery fee to issue the ruling, faxed or uploaded the signed notification (called the *Letter of Engagement*) and made an advance payment.

A binding ruling may only be issued by the Legal and Policy Division: Advance Tax Rulings Unit at the SARS Head Office. All applications for binding rulings must be filed online on www.sarsefiling.co.za. The eFiling system can also be accessed via the SARS website www.sars.gov.za.

See **Annexure F** for a summary of the various applications, the period within which to apply and the cost involved.

1.2 A brief overview

1.2.1 Definitions

Unless the context indicates otherwise, words are assigned the meanings ascribed to them in section 75 of the TA Act. In addition, the following terms have the following meanings:

'Advance payment' refers to an amount calculated as a percentage (normally 20%) of the highest estimated cost recovery fee that is payable in advance. This advance payment must be received by SARS before the substantive review of your application can begin.

'Advance tax ruling' refers to a 'binding private ruling' or a 'binding class ruling' issued by the ATR Unit of the Legal and Policy Division: Interpretation and Rulings under Chapter 7 of the TA Act (also see the definition of **'ruling'** on the next page).

'Anti-avoidance rule' refers to any general or specific anti-avoidance provision of the tax laws, including sections 80A and 103 of the Income Tax Act and section 73 of the VAT Act, as well as any judicial anti-avoidance doctrine, principle or mechanism.

'Application fee' means a fee payable over and above the cost recovery fee. The application fee is payable when an applicant files an application and this fee is generally non-refundable. The application fee is R2 500 for an 'SMME', as defined in the Government Gazette. This includes eight hours reviewing free of charge. All other applicants will pay a R14 000 application fee for either a BCR or a BPR application.

'Application forms' are the forms that must be completed and submitted online through the eFiling system in order to file an application. The forms consist of –

- an e-Application that includes a pre-screening checklist, contact details and basic information about the issues raised as well as a statement of standard terms and conditions; and
- the binding ruling application that must be uploaded.

An example of a binding ruling application is attached as **Annexure E**. The eFiling system limits the size of files to be uploaded to 10MB. Should the file exceed 10MB in size, please contact ATRInfo@sars.gov.za for a directive. (Refer to section 79 and **1.2.2** under **Supporting information and other required submissions**.)

'Business days' are business days calculated from the date of the completed application which includes submission of all information as stipulated in section 79. Business days exclude days during which SARS has to wait for information or feedback from the applicant. Completion times are estimates and may vary depending upon various factors, including the potential revenue implications raised by the application and the potential impact of the ruling on other taxpayers. If it appears that these times may be exceeded, the applicant will be notified in advance. The days from 16 December to 15 January (both dates included) must be added to the estimated time to complete a ruling application. This 'freeze period' applies to all applications that are in progress during that period.

‘Cost recovery fee’ refers to the fee prescribed by SARS for the issuance of a BCR or a BPR. The fee excludes an application fee that is payable over and above the cost recovery fee.

‘Estimated cost recovery fee’ refers to an estimate of the cost recovery fee which is published online.

‘Extension’ refers to an extension of the validity period of a binding ruling issued previously by the ATR Unit regarding a once-off transaction which has not occurred during the validity period.

‘Issues raised’ refers to the specific questions asked in the application about the tax implications regarding the proposed transaction.

‘Late application’² refers to any application that is submitted on eFiling less than 20 business days before –

- the date of the proposed transaction; or
- any other date or deadline requested or specified in respect of the application,

whichever is earlier.

‘Filed’: An application is considered filed when the applicant has –

- accepted the estimated cost recovery fee made available on eFiling;
- signed and returned the *Letter of Engagement* made available on eFiling; and
- made the advance payment.

‘Notice of acceptance’ refers to an automated notice issued by the ATR Unit to the applicant informing the applicant that the application has been accepted or rejected. If the application was accepted, this notice will indicate that the estimation of the cost recovery fee was published on eFiling.

A **‘reconfirmation’** is a re-application for a prior binding ruling issued by the ATR Unit, the validity period of which has expired. Provided the facts remain the same, the applicant may request that the ruling should be reconfirmed for a further period. Reconfirmations are applications for binding rulings and all terms and conditions applicable to applications are applicable to reconfirmations which include application fees.

A **‘ruling’** refers to a letter in the form of a complete written statement that SARS issues through the ATR Unit of the Legal and Policy Division: Interpretation and Rulings. It sets forth SARS’s interpretation of the relevant tax laws and how they would apply to the proposed transaction it describes.

² An application may not be accepted unless sufficient time is available for the issuing of a binding ruling **before** the transaction date.

Generally, a ruling (in the case of a BCR or a BPR) includes –

- a statement identifying it as a BCR or BPR made under section 78;
- the name, tax number and postal address of the applicant;
- a list or a description of the affected class members in the case of a BCR;
- the relevant statutory provisions and legal issues;
- a description of the proposed transaction;
- the specific ruling made;
- any assumptions made or conditions prescribed by SARS in connection with the validity of the ruling; and
- the period for which the ruling is valid.

An ‘**SMME**’ for purposes of the reduced fee is defined as –

- (a) any person, excluding a listed company, if the gross income for the most recent year of assessment did not exceed the amount prescribed in the definition of a ‘small business corporation’ under section 12E(4)(a)(i) of the Income Tax Act; and
- (b) in respect of applications for VAT rulings only, any partnership, where the gross income for the most recent year of assessment did not exceed the amount prescribed in the definition of a ‘small business corporation’.

1.2.2 The ATR process in a nutshell

Generally, the ATR process involves a number of steps, beginning with the submission of an application and ending with a ruling issued by the ATR Unit and its publication by SARS in edited form.

These steps are summarised 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 in 10 days. If there is any 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 your application is eligible for the ATR process and that it is not subject to a rejection.
- **Contact details and other basic information.** The remaining application forms permit SARS to obtain contact information about you and your authorised representative, if any. It also enables SARS to identify the general areas of the tax laws at issue in order to expedite the assignment of your application to a specialist and the processing of your application.

- **Confirmation and reference number.** Once you have successfully submitted the pre-screening checklist as well as the application forms, you will receive an electronic confirmation. Your confirmation will also include a reference number to be used in your further communication with SARS with regard to the application.
- **Supporting information and other required items.** In terms of section 79, you must also provide detailed supporting information and other required items in connection with your application. You must submit this information within five business days of the date of the electronic confirmation unless an extension is granted in writing.
- **Review of application.** Once the supporting information and other required items have been received, the application will be assigned to a specialist. The specialist will review your application more comprehensively to ensure that none of the rejection criteria apply.
- **Notice of acceptance.** Upon completion of this 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.
- **Estimated cost recovery fee.** The specialist will provide you with an online estimate of the cost recovery fee. Work in connection with your application cannot begin until you have read and accepted the *Letter of Engagement* as well as electronically accepted the estimated cost recovery fee and made the advance payment that was calculated as a percentage of the highest estimated cost recovery fee (normally 20%).
- **Letter of Engagement.** Upon acceptance of the estimated cost recovery fee, you must indicate that you have read and accepted the *Letter of Engagement* by ticking the relevant box. The engagement letter is a binding contract between you and SARS that sets forth the basic terms and conditions that govern the rulings process, including your acceptance of the estimated fee and agreement to make the advance and final payments.
- **Substantive review.** Once these requirements have been satisfied, the specialist will proceed with the substantive review of your application. During this process, the specialist may request additional information from you in connection with your application. A breakdown of the review is provided in **Annexure D**. A ruling application may still be rejected during the review process if it becomes apparent that an exclusion or rejection criterion is applicable.
- **Meeting with the specialist.** During the review process, you or the specialist may request a meeting to discuss and clarify the issues raised or the proposed transaction itself.. Note that meetings will not be held before the documentation has been uploaded, or a draft application has been provided, and no indication of whether the ruling will be positive or negative will be given.
- **Status checks.** You will be able to check the status of your application on the eFiling system throughout the review process or you can email **ATRInfo@sars.gov.za**.

- **Notice of proposed ruling.** Upon completion of the review process, you will be notified online of SARS's proposed ruling in response to the issues raised in your application. The proposed ruling may be positive or negative.
 - **Proposed positive ruling.** If the ruling is positive, you will be provided with a draft of the proposed ruling. You must review the draft ruling carefully for accuracy and inform SARS of any errors or omissions you believe may have been made.
 - **Proposed negative ruling.** If SARS intends to issue a negative ruling, you will be notified and given an opportunity to discuss the matter with the specialist. If a final decision is taken to issue a negative ruling, you will be given the option to –
 1. request that the ruling not be issued and to withdraw the application online after filing a notice to discontinue; or
 2. in certain limited cases, to amend the application to address those aspects of the proposed transaction that have given rise to the problem.

In either event you will remain liable for the work done on your application. In particular, any application fees paid will not be refunded and any outstanding costs incurred up to the date that the notice to discontinue is filed, must be paid.

Both cases may necessitate a revision of the original estimated cost recovery fee published. The specialist will inform you if necessary.

- **Issuance of the ruling.** Once all of the foregoing steps have been completed, the ruling will be issued to you online and upon your request, sent to the address shown on your application. The request must be received no later than the date upon which you approved the final ruling.
- **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. It is in most cases 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 requested on section 12D of the Income Tax Act 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.
- **Publication of the ruling in edited form.** If an ATR is issued to you, the final step involves the publication of the ruling in edited form (published ruling). You will also be provided with a draft copy of the edited ruling online for review and comment. You must review this draft carefully and notify SARS if you believe it contains any inaccuracies or other confidential information that should be deleted. SARS must consider, before publication, any comments and proposed edits and deletions submitted by you. In the event of a dispute, SARS's determination in respect of the content of the published ruling is final.

The following steps must be taken if you are applying for a reconfirmation:

- Access the SARS eFiling system and apply online again following the normal application process.
- Pay the applicable 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 whether or not the background circumstances have changed and the reason why in this instance an extension is in fact necessary from the applicant's perspective.

2. General information

2.1 Tax Acts (tax laws) to which the ATR system applies

SARS may issue an advance ruling on any provision of a 'tax Act' as defined in the TA Act, subject to the rejections contained in section 80 of the TA Act.

2.2 Application for an ATR

Any natural person, company, trust or estate who is, or intends to be, a party to a proposed transaction may apply for a binding ruling in connection with that transaction. An applicant does not have to be a 'resident' as defined in section 1(1) of the Income Tax Act, or subject to tax in South Africa at the time of application.

A representative, such as a lawyer or accountant, may file an application on behalf of a client. The representative applying on behalf of the applicant must submit a Power of Attorney or an equivalent written statement, signed by the applicant, authorising the representative to file the application and to represent the applicant in the ruling process.

An application may not be filed by a person who is not, or does not intend to be, a party to the proposed transaction in question, except in a representative capacity.

2.2.1 Special rule for partnerships

A partnership may not apply for a BPR for income tax purposes, as a partnership is not 'person' for income tax purposes, but the individual partners may do so. A partnership may apply for a BPR on behalf of the individual partners to whom the proposed transaction relates. A partnership may also apply for a BPR in respect of any other taxes referred to in 2.1. In the case of a BPR application for VAT purposes, the partnership is or may become a registered vendor and may thus apply for a BPR. Partnerships may apply on behalf of a class for a BCR relating to all taxes.

2.2.2 Special rules for certain applicants who are not resident

If the applicant is an individual or company that is not a resident that considers a business or investment venture in South Africa, they may not have a South African identification or tax registration number when the application is submitted. For this reason, the online application process includes a special form to be used in these instances. This form requires applicants to provide their taxpayer identification numbers from their country of residence in lieu of a South African identification or tax registration number.

In addition, the SARS eFiling system can only accept payment of the application fee from an account with one of four South African Banks: ABSA, First National Bank, Nedbank and Standard Bank. If your application is being filed by a local representative, the eFiling system can accept a payment made on your behalf through an account at one of those banks held by them. If applicants are filing the application on their own behalf, special procedures are available to make payment. Specific instructions are available on the SARS eFiling website.

2.2.3 Rules for BCR and BPR applications

More than one 'applicant'

Section 81(4) provides that if there is more than one applicant in respect of a proposed transaction SARS may, upon request by the applicants, impose a single prescribed fee in respect of the application.

SARS will therefore accept an application with an applicant and co-applicant(s), for example in situations involving companies proposing to conclude a transaction which may qualify the parties for the intragroup relief provided for by section 45 of the Income Tax Act.

Section 79(2) provides that more than one applicant must designate a lead applicant to represent the co-applicants.

BPR or BCR

In order to clarify if application should be made for a BCR or a BPR, the following scenarios are provided:

Although two parties (for example, company A and an Special Purpose Vehicle (SPV) embodying a share investment scheme) are parties to the same transaction, a binding private ruling application must be filed by company A and a binding class ruling application must be filed by the share investment scheme as the representative of the investors. The interpretation and application of the tax laws are different for each of them. Where the two parties are thus parties to the same transaction one application on e-filing will not suffice as two rulings, that is, one BPR and one BCR, must be issued. Only one applicant in the form of a class can apply for a BCR so there are no co-applicants in a BCR.

By way of another example: Company A proposes to pay bursaries to employees, they request a ruling that the payment will be deductible for company A and that the bursaries will not be gross income for the employees. A BPR will be issued for company A and a BCR for the employees. The company also has the option to only apply for a ruling on the deduction to withhold employee's tax. In such a case the company will have to apply for a BCR on behalf of the employees.

If different transactions take place, although they could be part of the same overall scheme, two different ruling applications will be required. For example, a company requires a ruling on whether tips received from customers by employees, that are held by the company for safekeeping and subsequently paid over to employees, subject to certain conditions, will constitute gross income for the company. In addition a ruling is requested as to whether the amount paid over to the employees will constitute 'remuneration' as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act. The payment to the employees is a consequence of the initial tips received, but also arise from a separate transaction (payment to the employees), thus two applications are required.

2.2.4 Meaning of ‘transaction’ and the scope of advance rulings – section 77

A ‘transaction’ is defined to mean any transaction, deal, business, arrangement, operation or scheme and includes a series of transactions. This definition excludes, for example, a request for a ruling on the determination of the amount to be included or deducted in the determination of taxable income in the case of the allowance under section 11(j) of the Income Tax Act if the transaction, the acquisition of a loan, happened in the past.

Rulings will for example be issued to an applicant that requested a ruling on the period over which a specific asset, which will be acquired after the ruling has been issued, can be written off.

There is no express statutory requirement that the proposed transaction may not be entered into before the ruling is issued, but it is arguably the implication. Applicants are therefore strongly advised to discuss the possibility of implementation of the proposed transaction with the ATR Unit of SARS in an appropriate case before the ruling is issued.

2.3 Fees – section 81

An application for a binding ruling is subject to both an application fee and a cost recovery fee.

The maximum amount of the application fee may not be exceeded unless –

- (a) the applicant amends the application; or
- (b) a new issue arises or is identified during the ruling process.

In the event that a revised estimated fee is necessary in either of these situations, the applicant will be notified and given an opportunity to discuss the revised estimate.

If an applicant fails or refuses to accept a revised estimated fee, the application may be rejected without any refund, waiver or abatement of any fees paid or incurred up to that point.

2.3.1 Application fee

In order to file an application for a binding ruling, you must pay an application fee. This fee must be paid when you file your application. Except in rare instances, with the prior approval of SARS, the application fee must be paid online through the SARS eFiling system. Special procedures are also available for applicants who do not have a South African bank account. Specific instructions are available on the SARS eFiling website.

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

The application fee for an SMME is currently R2 500 in respect of a BPR and a BCR. The application fee for all other applicants is R14 000. The application fee is non-refundable, except in extraordinary circumstances.

Reconfirmation applications are subject to an application fee as well as a cost recovery fee based on the complexity levels of the specific reconfirmation required.

2.3.2 Cost recovery fee

Your application is also subject to a cost recovery fee, based upon the number of hours that it takes to consider the issues raised in your application, as well as any direct costs incurred in connection with the issuing of the ruling. These direct costs could include travel costs, for example, where a visit to your operations might be helpful. It could also include the costs incurred in obtaining the services of a consultant or expert, for example, an engineer or a scientist, when necessary to advise upon technical aspects of a proposed transaction.

The amount of the cost recovery fee depends upon 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.

A cost recovery fee will also be charged for a reconfirmation and an extension application. The fee would be based on the complexity of the reconfirmation required.

The procedures and requirements in connection with the cost recovery fee are discussed in more detail in **4.4**.

3. Rejections

3.1 General overview

The TA Act imposes certain limits upon the issues in respect of which you may request a BPR or BCR. These limitations require the rejection of applications that do not qualify for consideration.

Rejections generally address four basic areas of concern:

- The impossibility of addressing fact-intensive issues through the ATR system.
- The need to have a complete picture of a proposed transaction before a ruling can be issued.
- The need to allocate limited resources in the most efficient and effective way possible.
- Certain basic policy issues in connection with the proper role of the ATR system.

These limitations are discussed in more detail in **3.1.1** below.

Note:

1. It is your responsibility to consult this list before submitting an application.
2. If you submit an application and it is subsequently determined that the application requests or requires a ruling in connection with an issue that was identified in this list at the time the application was submitted, the application will be rejected without any refund of the application fee.

3.1.1 Rejections – section 80(1)

SARS may reject an application for an ATR in connection with certain matters. The exclusions and refusals apply to the applications listed below and are discussed in detail under **(a)** to **(u)** of this paragraph:

- An application requesting an opinion, conclusion or determination regarding –
 - the market value of an asset;
 - the application or interpretation of the laws of a foreign country;
 - the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant or a class member;
 - the constitutionality of a tax Act;
 - a proposed transaction that is hypothetical or not seriously contemplated at the time the application is filed;
 - a matter which can be resolved by SARS issuing a directive under the Fourth or Seventh Schedule to the Income Tax Act;
 - whether a person is an independent contractor, labour broker or personal service provider; or
 - an application that is submitted for academic purposes.
- An application that contains –
 - a frivolous or vexatious issue;
 - alternative courses of action by the applicant or class member not seriously contemplated; or
 - an issue that is the same as or substantially similar to an issue that is –
 - 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.
- An application that involves the application or interpretation of a general or specific anti-avoidance provision or doctrine.
- An application that involves an issue –
 - that is of a factual nature;
 - 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;
 - which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation;
 - 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;

- 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; or
- which is the same as or substantially similar to an issue upon which the applicant has already received an unfavourable ruling.
- An application that involves a matter the resolution of which would be unduly time-consuming or resource intensive.
- An application that requests SARS to rule on the substance of a transaction and disregard its form.

In addition to the above, an application may also be rejected in respect of an issue identified by SARS and which must be published in the *Government Gazette*.

There are several reasons for these rejections. The most important reasons are as follows:

- The ATR system is designed to provide taxpayers with certainty in respect of SARS's view on questions of tax law. It is not designed or appropriate for the resolution of questions of fact. Facts can only be established after a transaction has been completed and any factual issues must be resolved through the audit process;
- Many important tax issues involve the application or interpretation of the tax laws to the facts of a proposed transaction. Applications for rulings in connection with those issues generally do not present a problem. However, some issues are of an inherently or distinctly factual nature.
- SARS must ensure that limited resources are put to the best possible use. For this reason the ATR system is limited to providing guidance in respect of proposed transactions that are seriously contemplated at the time the application is filed.

Further, the resolution of an issue may depend upon matters that cannot reasonably be determined at the time the application is filed or upon the tax treatment of another party to the transaction who has not applied for a ruling.

An application in which the applicant fails or declines to provide additional information that has been requested by SARS in connection with the application may be rejected without refunding the application fee imposed under section 81.

Notes:

1. Any example that is given is for informational purposes only and is intended solely to illustrate the types of situations in which these rejections may be applied. Due to the nature of these discretionary rejections, any determination in respect of an actual application must be made exclusively on a case-by-case basis after a careful review of the application itself.
2. It is your responsibility to ensure that any statements made are true and accurate.
3. These statements remain subject to review and verification upon audit.
4. It is also your responsibility to disclose any facts that would likely raise a serious concern in respect of an anti-avoidance rule. If you fail to do so, SARS may reject your application upon the discovery of those facts at any point in the review process. If this occurs, you will remain liable for payment for the work done on the application up to the date of rejection. Application fees paid will not be refunded and any outstanding cost recovery fee incurred up to the date of rejection must be paid.

5. If it is subsequently determined that material statements were not true or accurate, the ruling will be rendered void from the time it was issued in accordance with section 84. For more detailed information in connection with this issue, see **5.2.1**.

(a) An application requesting the rendering of an opinion, conclusion or determination regarding the market value of an asset – (section 80(1)(a)(i))

This exclusion would apply to an application that requests or requires a determination –

- of the current market value of assets you own, for example, your home, shares etc;
- of the market value of any financial instrument or other asset for purposes of determining whether or not a company constitutes a ‘domestic financial instrument holding company’ or ‘foreign financial instrument holding company’ as defined in section 41(1) of the Income Tax Act; or
- that an asset has been disposed of at fair market value for purposes of donations tax.

Situations in which this exclusion or refusal may not apply

Generally, the exclusion or refusal does not apply if the application merely contains a statement in respect of the market value of an asset but does not request or require a determination in respect of that matter. Thus, the exclusion or refusal would generally not apply to a situation in which the market value of an asset is relevant to a requirement or prerequisite under a particular statute, but the application does not request or require a ruling in connection with –

- that requirement or prerequisite itself; or
- the actual market value of the asset.

Similarly, the exclusion or refusal would generally not apply where a statement in respect of the market value of an asset merely provides helpful or useful background information in connection with the ruling request.

Example 1

An applicant may request a ruling in connection with a proposed company formation transaction in which the applicant disposes of an asset to a company and becomes entitled, in exchange for that asset, to other considerations in addition to equity shares issued by the company. The issue raised is limited to the treatment of that other consideration. The company formation provisions only apply to transactions in which the market value of an asset exceeds its base cost at the time of the disposal. In this situation, the application may include a statement that this requirement is satisfied or that the market value of the asset will exceed its base cost at the time of the transaction.

(b) An application requesting an opinion, conclusion or determination regarding the application or interpretation of the laws of a foreign country – section 80(1)(a)(ii)

This exclusion would apply to an application that requests or requires a determination that –

- a company is (or is not) a resident of a foreign country under that foreign country's rules for determining residency;
- certain periodic payments to be made by a foreign company would (or would not) be subject to a withholding tax imposed by that foreign country; or
- a particular amount that is received by or accrued to a foreign company would (or would not) constitute an item of gross income under the income tax laws of that foreign country.

Situations in which this exclusion or refusal might not apply

This exclusion or refusal does not apply if the application merely contains a statement in respect of a particular issue under foreign law but does not request or require a determination in respect of that matter. Thus, the exclusion or refusal generally would not apply to a situation in which a question of foreign law is relevant to a requirement or prerequisite under a particular statute, but the application does not request or require a ruling in connection with –

- that statutory requirement or prerequisite; or
- that question of foreign law itself.

Similarly, the exclusion or refusal would not apply where a statement in respect of the question of foreign law merely provides helpful or useful background information in connection with the ruling request.

For example, an applicant may request a ruling in connection with the application of rebate carry-forward provisions of section 6quat(1B) of the Income Tax Act in respect of a particular tax imposed by a foreign country. In this situation the applicant may include a statement that the tax in question will not be subject to any right of recovery by any person for purposes of section 6quat(1C).

(c) An application requesting an opinion, conclusion or determination regarding the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant or class members – section 80(1)(a)(iii)

This exclusion would apply to an application that requests or requires a determination that –

- the price to be charged by the applicant for goods it may sell to a foreign subsidiary would reflect an arm's length price as contemplated by section 31 of the Income Tax Act;
- the price to be charged by the applicant for services it will supply to a controlled foreign company owned by it, would reflect an arm's length price as contemplated by section 9D(9)(b)(ii) of the Income Tax Act; or
- the consideration to be charged by the applicant in connection with a proposed disposal of an asset to a connected person in relation to the applicant reflects an arm's length price as contemplated by paragraph 38(1) of the Eighth Schedule to the Income Tax Act.

In particular, you may not use the ATR system to request an advance pricing agreement or its equivalent.

Situations in which this exclusion or refusal might not apply

This exclusion or refusal does not apply if the application merely contains a statement in respect of the pricing of goods or services but does not request or require a determination in respect of that matter. Thus, the exclusion or refusal would not apply to a situation in which the pricing of goods or services is relevant to a requirement or prerequisite under a particular statute, but the application does not request or require a ruling in connection with –

- that requirement or prerequisite itself; or
- the pricing itself (for example, whether it actually reflects an arm's length price or the fair market value of an asset or service).

Similarly, the exclusion or refusal generally would not apply where a statement in respect of the pricing merely provides helpful or useful background information in connection with the ruling request.

(d) An application requesting an opinion, conclusion or determination regarding the constitutionality of any tax law – section 80(1)(a)(iv)

This exclusion also applies to any application that contains or includes a statement or assumption that a tax law is unconstitutional.

There are no exceptions to this rule.

(e) An application requesting an opinion, conclusion or determination regarding a proposed transaction that is hypothetical or not seriously contemplated – section 80(1)(a)(v)

'Hypothetical' transactions would include ones that are merely conjectural, theoretical or proposed simply for possible further investigation or consideration. For example, this exclusion would apply to any application that –

- indicates that the applicant is considering a possible investment in the film industry at some future date, but has no specific plans to do so at present and is simply interested in the potential tax consequences of doing so;
- relates to a very general possible transaction, but none of the other parties have been identified and all or most of the specific terms of the transaction are vague or subject to substantial uncertainty; or
- indicates that the applicant is merely 'thinking about' or 'considering' a possible transaction or course of action but has no definite plans to do so at present.

There are no exceptions to this rule.

(f) An application requesting a ruling on a matter which can be resolved by SARS issuing a directive under the Fourth or Seventh Schedule of the Income Tax Act – section 80(1)(a)(vi)

Matters can be resolved more easily and speedily by the issuing of a directive than through the ATR process. Directives are also binding on the Commissioner and it is not expected of taxpayers to pay a fee for a directive. Because of the factual nature of application for directives, ATR applications may also be rejected based on section 80(1)(d)(i).

(g) An application relating to the duty of an employer to determine whether a person is an independent contractor, labour broker, or personal service provider – section 80(1)(a)(vii)

This issue is both fact and resource intensive. In addition, it is only the employer who has full knowledge of those facts.

There are no exceptions to this rule.

(h) An application that is submitted for academic purposes – section 80(1)(a)(viii)

This exclusion would apply to any application submitted by a –

- professor in connection with a scholarly article on an aspect of the VAT Act;
- tax practitioner in connection with the preparation of a scheme to minimise the tax liability of the tax practitioner's clients in a particular industry;
- student in connection with a thesis.

There are no exceptions to this rule.

(i) An application that presents, contains, or raises a frivolous or vexatious issue –section 80(1)(b)(i)

Frivolous issues would include questions with answers that are completely obvious under the plain language of the statute, for example, an application by a resident requesting a ruling that ordinary wages paid as consideration for services performed in South Africa are gross income. Vexatious issues would include a request for a determination that a particular tax law is unfair and should be repealed (or that, despite its applicability to the proposed transaction, it should not be enforced because of the hardship which doing so would entail to the applicant).

There are no exceptions to this rule.

(j) An application that presents, contains, or raises alternative courses of action by the applicant (or requesting an opinion, conclusion or determination regarding such alternative courses of action) – section 80(1)(b)(ii)

This exclusion would apply to an application that sets forth various ways or methods for entering into or carrying out a proposed transaction and seeks, directly or indirectly, SARS's advice in respect of how the proposed structure should be arranged. It would also apply to an application that sets forth a proposed course of action but further requests, in the event of an adverse ruling, that SARS advises or suggests different alternatives that would remedy the problem(s). The function of the ATR system is to provide binding rulings on the specific tax treatment proposed by the applicant on the proposed transaction. It does not provide applicants with tax or legal advice in respect of how to structure possible transactions.

Situations in which this exclusion or refusal might not apply (guidance in respect of consequential issues in the event of an adverse ruling on a primary issue)

In certain circumstances, an applicant may be committed to pursuing a business transaction even in the event of an adverse ruling in connection with a particular issue. In these situations, an adverse ruling in respect of a primary or threshold issue is likely to have significant implications and may raise new or different issues in connection with the proposed transaction. In these limited circumstances, the exclusion or refusal would not apply to an application that seeks a ruling in connection with such issues.

Example 2

A company is planning to begin a joint venture in a foreign country and wants to pursue this venture through a particular type of entity organised under the laws of that country. In this context, the applicant may request a ruling that the foreign entity would be a 'company' for purposes of the Income Tax Act and then request a ruling in respect of the application of the definition of the term 'participation rights' in section 9D(1) to the applicant's ownership interest in that entity. In addition, in the event of an adverse ruling in respect of this primary issue, the applicant may, in the alternative, request rulings that the foreign entity would be a partnership and that the applicant would be a partner subject to the provisions of section 24H.

This exception only applies to situations in which the applicant is firmly committed to pursuing the course of action to which the primary or threshold issue relates. Thus, for example, the exception would **not** apply to an application if it indicates that the applicant intends to use a particular foreign entity for a joint venture in another country, but only if that entity is classified as a partnership for South African income tax purposes, and that, in the event of an adverse ruling, it is considering the use of entities in connection with the transaction, depending upon the South African tax treatment of each one.

(k) An application that presents, contains, or raises an issue that is the same as or substantially similar to issues which are potentially or actually in dispute – section 80(1)(b)(iii)

SARS may reject an application if it requests or requires a determination in respect of the following:

(i) An issue that is currently before SARS in connection with an audit, examination, investigation or other proceeding involving the applicant or a connected person in relation to the applicant or a class member – section 80(1)(b)(iii)(a)

This is a material fact that must in any event be disclosed in the application. No exceptions to this rule will be allowed. It is not appropriate for the ATR system to serve as an alternative dispute resolution channel.

This issue is discussed in more detail in **4.2.6**.

(ii) An issue that is the subject of a policy document or draft legislation that has been published – section 80(1)(b)(iii)(bb)

SARS will not accept an application that requests a ruling in connection with the application or interpretation of any proposed legislation before its promulgation. In addition, SARS will not accept applications that request or require rulings in respect of existing tax laws that are the subject of proposed amendments following the release of those amendments for comment, either to the public generally or to industry groups. If a proposed amendment is to be retrospective in effect, applications will not at all be accepted in respect of proposed transactions that would be entered into or carried out subsequent to the proposed effective date of that amendment.

Situations in which this exclusion or refusal might not apply (specific cases of compelling need)

In specific cases of compelling need, SARS may agree to accept an application that requests a ruling in respect of current law following the release of a policy document or proposed amendment for comment if –

- the proposed transaction will be entered into or carried out before the anticipated effective date of the policy or proposed amendment; and
- the request seeks a ruling solely in respect of the application or interpretation of the current law.

Determinations will be made on a case-by-case basis.

Example 3

An applicant may request a ruling in respect of the treatment of certain aspects of a proposed black economic empowerment (BEE) transaction. A proposed amendment to the governing tax law has been released for comment, but the proposed transaction would be completed before the anticipated effective date of that amendment. The main financing party will not commit to provide financing for the transaction unless a favourable ruling is received in respect of this issue. The applicant seeks a ruling solely in respect of the application or interpretation of the current law. In these circumstances SARS would consider accepting the application.

(iii) An issue that is subject to dispute resolution under Chapter 9 of the TA Act – section 80(1)(b)(iii)(cc)

SARS may reject an application if it raises or presents an issue that is the same as or substantially similar to an issue currently pending before the courts.

There are no exceptions to this rule.

(l) An application requesting the application or interpretation of any general or specific anti-avoidance provision or doctrine – section 80(1)(c)

There are several important reasons for this rejection. One is that the application of these anti-avoidance rules is often extremely fact-intensive and cannot be undertaken until a transaction has actually been entered into or carried out. Another is the danger that the ruling process might be abused in an attempt to probe for loopholes in these rules or to develop ‘roadmaps’ for new abusive avoidance schemes.

In practice, this rejection would be applied in two specific situations. It involves any application –

- that requests or requires a ruling specifically in respect of the application or interpretation of an anti-avoidance rule itself; or
- in respect of a proposed transaction that would raise serious concerns under an anti-avoidance rule if it were to be entered into or carried out in the manner described in the application.

Example 4

An applicant requests a ruling as to whether or not a proposed multi-step transaction would be considered an 'arrangement' for purposes of sections 80A or 103(2) of the Income Tax Act.

Example 5

An applicant requests a ruling in respect of how the 'abnormality requirement' in section 80A of the Income Tax Act would be interpreted and applied in connection with a proposed complex series of transactions resulting in a significant tax benefit.

Example 6

An applicant requests a ruling as to whether or not the obtaining of a tax benefit would be the sole or main purpose of a proposed transaction for purposes of section 80A of the Income Tax Act.

Example 7

An applicant requests a ruling as to whether or not a proposed transaction in connection with the sale of shares in a foreign subsidiary and a possible subsequent disposal of the proceeds from that sale would constitute a 'transaction, operation or scheme' for purposes of paragraph 64B(3)(c)(iii) of the Eighth Schedule to the Income Tax Act.

Example 8

An applicant requests a ruling as to whether or not a proposed transaction involving an 'instrument' (as defined in section 24J(1) of the Income Tax Act) and subsequent payments to a connected person in relation to the issuer of that instrument would constitute a 'transaction, operation or scheme' for purposes of the proviso to the definition of the term 'yield to maturity' [also in section 24J(1)].

Example 9

An applicant requests a ruling in respect of its right to claim capital allowances under section 12C of the Income Tax Act in connection with its acquisition of an aircraft. The financing of the acquisition involves a series of steps and the use of a number of complex financial derivatives. The net effect of these various steps and financial derivatives is to create a circular flow of cash among the parties to the proposed transaction that is routed through a tax indifferent party and results in a substantial inflation of the cost of the aircraft. These aspects of the proposed transaction were not disclosed in the application and were not evident from the information provided. Upon discovery of these elements, SARS may reject the application under this exclusion. A similar result would apply if the applicant had failed to disclose any steps in, or parts of, the proposed transaction that would have given rise to the circular flow of cash. In this situation, the applicant remains liable for the work done on the application. The application fee paid may not be refunded and any outstanding cost recovery fee incurred up to the date of rejection must be paid.

Situations in which this rejection might not apply

SARS would not apply this rejection if the application merely contains a statement that provides information that may either be required or helpful in connection with the application.

For example, an application that requests a ruling as to whether or not a proposed transfer of assets from one company group to another would constitute an intra-group transaction under section 45(1) of the Income Tax Act, would not be rejected simply because it includes a statement that the proposed transaction is not part of a larger transaction, operation or scheme.

(m) An application regarding an issue that is of a factual nature – section 80(1)(d)(i)

The ATR system is designed to provide taxpayers with certainty in respect of SARS's view on questions of the law. It is not designed or appropriate for the resolution of questions of fact. Facts can only be established after a transaction has been completed and any factual issues must be resolved through the audit process.

Many important tax issues involve the application or interpretation of the tax laws to the facts of a proposed transaction. Applications for rulings in connection with such issues generally do not present a problem. However, some issues are of an inherently or distinctly factual nature. It is issues of this kind to which this exclusion may be applied.

Example 10

An applicant requests a ruling as to whether an amount to be received or accrued (or expenditure to be incurred) would be of a revenue or capital nature in circumstances that necessitate the determination of its intention on the basis of – amongst others – the surrounding facts. The guiding principle is whether it would be necessary, in case of legal proceedings to determine any dispute concerning the applicant's intention, to cross-examine the applicant on its evidence as to that intention.

Example 11

An applicant requests a ruling that the proposed activities of the applicant constitutes the carrying on of a trade for purposes of section 11 of the Income Tax Act.

SARS may update the list in respect of additional considerations in order to identify specific issues that are of an inherently or distinctly factual nature and would therefore be rejected under this exclusion. It is the applicant's responsibility to consult the list before submitting an application. If an applicant requests a ruling in connection with an issue that has been identified as an inherently or distinctly factual one, the application may be rejected without any refund of the application fee.

Situations in which this rejection may not apply

SARS would not apply this rejection if the application merely contains statements that provide required or helpful information in connection with the proposed transaction. For example, an application would not be rejected because it contains a complete description of the facts in respect of a proposed transaction as required by section 79(4).

SARS will also not apply this rejection if the application raises a question of law and the factual matters are merely incidental or subsidiary to the resolution of that legal issue. In these situations, the ruling would only reflect the application or interpretation of the law in respect of the facts that are presented in the application – it would not be issuing a ruling or determination in respect of the facts themselves.

Finally, SARS may issue a ruling in connection with a legal issue that is –

- dependent upon a particular set of facts; and
- those facts are clear, straightforward and basic to the application or interpretation of the tax law in respect of the proposed transaction. Again, in these situations, the ruling would only be applying and interpreting the tax law to the facts presented and would not be making a ruling or determination in respect of those facts.

Example 12

An applicant is engaged in manufacturing motor vehicles and is proposing to acquire and install a new, state-of-the-art CAD/CAM system in order to increase the efficiency and reduce the costs of its manufacturing operations. In connection with its application the applicant submits various marketing, technical and training materials that describe the function and operation of the new system in detail. The applicant requests a ruling that the CAD/CAM system would constitute machinery used by the applicant directly in the process of manufacture for purposes of section 12C of the Income Tax Act.

Example 13

The applicant is proposing to enter into a complex, multi-step transaction in connection with a proposed broad based black empowerment scheme. As part of this transaction, the applicant is proposing to transfer certain assets to a subsidiary in which it will hold at least 70% of the shares at the time of the transfer. The applicant requests a ruling that the proposed transfer would qualify as an 'intra-group transaction' for purposes of section 45 of the Income Tax Act.

(n) An application regarding an issue, the resolution of which would depend upon assumptions of future events or other matters that cannot be reasonably determined at the time of the application – section 80(1)(d)(ii)

Under this exclusion, an application would generally be rejected if the resolution of the issue depends upon a future action of another person unless that person is a party to the proposed transaction. In addition, an application would generally be rejected if the resolution of the issue depends upon future events that are beyond the control of the applicant or other parties to the proposed transaction.

Example 15

An applicant requests a ruling that the ring-fencing provisions of section 20A of the Income Tax Act would not apply to assessed losses from a proposed new trade. The trade in question is not one of those identified in section 20A(2)(b) of that Act. In these circumstances, the application of the ring-fencing provisions would depend upon, among other things, whether or not the applicant will incur assessed losses from that trade in future years. This fact is beyond the control of the applicant and cannot be determined at the time the application is made. Accordingly, the exclusion would apply and the application would be rejected.

Example 16

An applicant proposes to rent premises with the intention to develop them by building an office park. It then proposes to let the office space to prospective tenants. It seeks rulings regarding allowances it proposes to claim under sections 11(g) and 11(h) of the Income Tax Act. In order to be able to claim the allowances the applicant proposes to enter into leases with prospective tenants and with the landowner upon certain specific terms it sets forth in the application. If those terms are indeed agreed upon the application will be successful. SARS will however have to assume that in the foreseeable future all of those parties will agree to enter into the proposed transaction on precisely the terms the applicant states it will seek to secure. Although the applicant therefore proposes a transaction, SARS will be unlikely to make all of the assumptions necessary to result in a successful application in this instance. The applicant would have to identify the parties who, ideally, should as far as possible be co-applicants. SARS will however not require the impossible. It would be easier to join in the application with the landowner than with prospective tenants. The applicants will also have to produce their proposed contract of lease and the lessee would have to produce the standard terms upon which it will insist on subletting the office space. If at least one proposed sub-lessee has already been identified, this will strengthen the applicant's prospects all the more. Otherwise SARS might accept the application and issue a positive ruling on condition that the subleases are entered into strictly on the terms the applicant proposes.

Situations in which this rejection may not apply

Under section 78(3), SARS may issue a binding ruling subject to conditions and assumptions that are prescribed in the ruling. In certain situations, an application may contain statements in respect of the future conduct of the parties that are directly relevant to the issue raised in connection with the proposed transaction. In such a situation, SARS may issue a ruling, but only on the condition that the future behaviour of the parties actually occur strictly in accordance with the statements made in the application.

If an applicant subsequently fails to satisfy such a condition or assumption, the ruling will be rendered void from the time it was issued in accordance with section 84(1)(c). For more detailed information in connection with this issue, please read **5.2.1**.

(o) An application regarding an issue which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation – section 80(1)(d)(iii)

SARS may reject an application regarding or in respect of an issue which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation.

(p) An application regarding an issue which is the same as or substantially similar to an issue upon which the applicant has already received an unfavourable ruling – section 80(1)(d)(vi)

The ATR system has limited resources and it is vital that these resources be allocated and used as efficiently and effectively as possible. There is also no appeal against an unfavourable ruling. A second or further application on similar issues by the recipient of a prior unfavourable ruling can therefore amount to an abuse of the ATR process, which this provision seeks to prevent.

Generally, this exclusion may be applied if –

- an applicant makes repeated applications in connection with recurring proposed transactions; and
- there have been no material changes in the relevant facts or tax law since the prior unfavourable rulings were issued.

(q) An application regarding an issue in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction and that other party has not applied for a ruling – section 80(1)(d)(iv)

In certain complex multi-party transactions, for example, the resolution of an issue raised by the applicant may depend upon the tax treatment of another party in connection with or as a result of its participation in the transaction. This exclusion may be applied in such circumstances.

Example 17

An applicant is a resident company and is a wholly-owned subsidiary of Holdco, another resident company. Company X is also a resident company. Company X has several classes of equity shares with differing rights, none of which are currently owned by the applicant or Holdco. In a multi-step proposed transaction, Holdco proposes to acquire more than 70% of some, but not all, of the different classes of equity shares issued by Company X. Upon completion of this step, the applicant plans to transfer certain assets to Company X in order to consolidate the operations of the two companies (the applicant and company X) and to achieve certain economies of scale. In its application, the applicant requests a ruling that the proposed transfer of assets constitutes an ‘intra-group transfer’ as defined in section 45(1) of the Income Tax Act. In order for a transaction to satisfy that definition, however, the applicant and Company X must be members of the same group of companies. The resolution of that issue, in turn, depends upon whether or not Holdco will own at least 70% of the total equity shares of Company X upon the completion of the first step. Under these circumstances, the exclusion may be applied unless Holdco also submits an application in connection with the ownership issue.

Example 18

An applicant applies for a ruling under section 11(g) of the Income Tax Act, but the party to whom the right to have such improvements effected will accrue, is not party to the application. The exclusion may be applied, unless the party to whom the right accrues is a co-applicant in the application.

(r) An application regarding a proposed transaction that is part of another transaction which has a bearing on that issue and the details of that other transaction have not been disclosed – section 80(1)(d)(v)

SARS may reject an application if the applicant requests a ruling on an issue –

- in connection with a proposed transaction;
- that proposed transaction is part of another transaction;
- that other transaction has a bearing on the issue raised; and
- the details of that other transaction have not been disclosed.

Generally, this exclusion is likely to be a concern in complex multi-party, multi-step transactions.

Example 19

The applicant, a resident company, is proposing to enter into an amalgamation transaction, as contemplated in section 44 of the Income Tax Act, with another resident company, Resultant. As part of this proposed transaction, the applicant will dispose of all of its assets to Resultant solely in exchange for equity shares of Resultant and the assumption of the debts of the applicant, some of which will have been incurred within 18 months of the proposed transaction ('recent debt'). The applicant requests a ruling that the assets disposed of by it will qualify the applicant for full 'roll-over' relief under section 44, but does not disclose the circumstances under which the recent debt was incurred. Whether or not the applicant is entitled to full roll-over relief, however, depends upon the circumstances in which such debt is incurred. Accordingly, this exclusion may be applied, unless the applicant also discloses the details of those relevant transactions.

An applicant in this situation will be given an opportunity to provide the requisite information. If the applicant still fails or refuses to provide the requisite information, the application will be rejected. If an application is rejected under this rule, the applicant will not receive a refund of the application fee or any cost recovery fee incurred in connection with the application up to the date of rejection.

The above example concerns an easily remediable failure to provide all of the required information. There are instances in which information is not strictly speaking necessary to complete the picture, but the failure to disclose certain information nonetheless raises the question why the applicant chose not to make a full disclosure. SARS will not accept as an explanation the reason that the applicant considered that SARS did not need to know or that SARS ought to have known about the undisclosed information because of information already under SARS's control. The ATR process is one in which SARS is dependent on the honesty of taxpayers and tax practitioners. SARS therefore requires a sanction through which to compel applicants to adhere to the highest ethical standards of disclosure in their dealings with the ATR Unit. The application process is in many ways similar to an *ex parte* application to a court of law. Our courts have repeatedly stressed that an applicant in such an application – because it is unopposed – is under an even stricter duty to make a full and frank disclosure and SARS considers that the same standard applies to ATR applications. It follows that if a non-disclosure is discovered that SARS considers significant, the applicant may be requested to provide reasons why the application should not be rejected on that account.

(s) An application regarding a matter that would be unduly time-consuming or resource intensive – section 80(1)(e)

This rejection is intended to help ensure that the limited resources available to the ATR Unit are optimally utilised. As a result, SARS may reject such an application. In particular, this exclusion may be applied in situations in which the applicant fails to submit a timely application, taking into account the number and complexity of the issues raised and the complexity of the proposed transaction itself or the voluminous nature of the supporting documentation.

Before an application is rejected under this provision, the applicant will be notified and given an opportunity to present any special circumstances that support or justify accepting the application.

The applicant will generally receive a refund of the application fee if an application is rejected under this exclusion.

Example 20

An applicant, a resident company, intends to enter into a complex multi-national restructuring transaction which has been under consideration for more than a year. The proposed transaction would involve more than a dozen steps and would involve more than 25 separate legal arrangements. The applicant requests a ruling in connection with 20 discrete issues, including complex issues under section 9D of the Income Tax Act, the corporate rules, and the Eighth Schedule to that Act. The applicant submits the binding ruling application 15 days before the proposed transaction date. In this situation it would require an extraordinary last minute reallocation of resources to address this application to the detriment of other applicants who had submitted their applications timeously. In addition, given the number and complexity of the issues raised and the complexity of the underlying proposed transaction itself, it is unlikely that SARS would be able to address the issues raised in a proper manner within the limited time the applicant has left. Under these circumstances, the exclusion would be applied.

(t) An application requesting SARS to rule on the substance of a 'transaction' and disregard its form – section 80(1)(f)

SARS may reject an application about a matter that requires SARS to rule on the substance of a transaction and disregard its form.

(u) The applicant fails or declines to provide additional information that has been requested by SARS in connection with the application – section 79(5)

SARS is entitled to request additional information from an applicant at any time and to reject an application if the applicant fails or refuses to comply with such a request. If an application is rejected under this provision the applicant will not receive a refund of the application fee or any cost recovery fee incurred in connection with the application up to the date of rejection.

3.1.2 Additional considerations in respect of which the Commissioner may reject an application – section 80(2).

SARS is authorised to publish a list of issues in respect of which applications may be rejected. The currently operative exclusions are listed below. The list is intended to assist applicants by identifying specific issues in respect of which applications may not be accepted, for example, to identify particular issues that –

- are currently pending before the courts; or
- may be declined because these issues are inherently or distinctly factual in nature.

Income Tax

- (a) The deductibility of expenditure relating to the taking over of liabilities or of provisions upon the acquisition of a business.
- (b) The qualifying allowance, contemplated in section 24C of the Income Tax Act, in respect of future expenditure, that SARS may determine.
- (c) The validity of the treatment of amounts as 'salary sacrifices' for remuneration purposes.
- (d) Requests that circumvent mechanisms enabling SARS to issue directives. For example, this exclusion will apply to directives as provided for in paragraph 3 of the Seventh Schedule to the Income Tax Act.
- (e) The interpretation and application of the exemption under section 10(1)(c)(v) of the Income Tax Act in relation to any agreement entered into before 1 January 1990.
- (f) The deductibility of any expense incurred by an employer in order to transfer or extinguish, in whole or in part, its post-retirement medical aid obligations to past and present employees (excluding deductions under section 12M of the Income Tax Act), specifically including, but not limited to –
 - (i) lump sum contributions to pension, provident or benefit funds;
 - (ii) lump sum settlement payments made directly to employees; and
 - (iii) premiums paid by the employer to acquire annuity policies.
- (g) The deductibility, under sections 11(a) or 24J(2) of the Income Tax Act, of interest incurred by a company on debt used to finance the acquisition of shares in another company for the purpose of acquiring the underlying assets or business.
- (h) The determination of the place of effective management for purposes of the definition of the term 'resident' in section 1(1) of the Income Tax Act.
- (i) The tax implications of transactions that involve a so-called purpose trust.

Value-Added Tax (VAT)

- (a) Applications in which the supplier of goods or services is not the applicant or a co-applicant and the application pertains to the VAT liability of a supply of goods or services made by that supplier.
- (b) Confirmation that a person is acting as an agent or principal in respect of a supply of goods or services.
- (c) The application of section 8(15) of the VAT Act, and whether a supply of goods or services constitutes a single supply.
- (d) Confirmation whether or not any technical requirements are met in respect of electronic invoicing.

Donations Tax

- (a) Considering the price or amount that would constitute 'fair market value' under section 55(1) of the Income Tax Act.
- (b) Any exercise of SARS's discretion under section 58(1) of the Income Tax Act concerning the adequacy of consideration given for the disposal of property.

General

- (a) Applications concerning the attribution, allocation or apportionment of expenditure or input tax (from an income tax and VAT perspective), excluding a request for an alternative apportionment method in terms of section 41B of the VAT Act.
- (b) Applications pertaining to the tax consequences of transactions in respect of agreements which have already been concluded, except requests for:
 - (i) VAT rulings or VAT class rulings under section 41B of the VAT Act; or
 - (ii) The reconfirmation of a ruling, before its expiry date, if the facts (including all the terms of the transaction) and the applicable provisions of the relevant legislation remained the same.
- (c) Applications relating to or involving transactions which, in the opinion of SARS, could be subject to any general or specific anti-avoidance provisions in the various Acts administered by SARS. Should the applicant be uncertain whether this item will apply to an application, a draft application may be submitted before registering it on e-Filing and paying the application fee. This application should clearly indicate 'No Rulings List' in the subject line and be sent to **ATRInfo@sars.gov.za**.

Notes:

1. The list of additional considerations is published on the SARS website on the ATR homepage and is updated on a continuous basis. Please consult the list before submitting the ruling application to ensure that the issue is not part of the latest updated list.
2. If you submit an application and it is subsequently determined that the application requests or requires a ruling in connection with an issue that was identified in the exclusions as published in the *Government Gazette* at the time that the application was filed, the application may be rejected without any refund of the application fee.

4. The ruling process

4.1 The nature of the process

The ATR process is distinctly formal. There is a specific process to follow for an application and specific rules are applicable with regard to the information that must be submitted with the online application in order to obtain a ruling. The process and requirements are discussed in more detail below.

4.2 The application process

The application process starts with the completion and submission of the online application forms. These forms must be filed through the SARS eFiling system.

4.2.1 Filing

Early filing

In many cases a complex transaction may undergo a number of changes and modifications before the terms of the proposed transactions are finalised. At that point, the transaction often moves very quickly to completion and the application must be filed as soon as the proposed transaction reaches the stage in which it is seriously contemplated. Doing so gives

your application a place in the 'queue' and permits the specialist to become familiar with the general nature of the proposed transaction and the potential issues that may arise. Please notify the specialist immediately of any changes or developments in connection with the proposed transaction in progress. Any substantive changes or developments may lead to a revised estimated cost recovery fee and timeframes.

Timeous filing

Applications should be filed in time. In particular, the application must be filed sufficiently in advance to allow SARS adequate time to review it and issue the ruling before the proposed transaction date. The number and complexity of the issues raised and the complexity of the proposed transaction should also be considered when filing the ruling application.

Your application must be submitted at least 40 business days before –

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

whichever is earlier.

Reconfirmations and extension requests must be filed 60 business days before the validity period of the binding ruling previously issued, expires.

Late filing

A late application may not be accepted –

- unless extraordinary circumstances can be motivated in connection with the proposed transaction and sound reasons for the late application have been submitted; or
- under any circumstances if it is filed less than 20 business days before the earlier of those dates referred to under 'Timeous filing' above.

Late reconfirmation or extension requests may not be accepted unless extraordinary circumstances can be motivated for the late submission. They cannot be accepted under any circumstances if they are filed less than 20 business days before the validity period of the original binding ruling expires.

Completed filing

An application is not considered 'filed' until the –

- estimated cost recovery fee has been accepted online;
- *Letter of Engagement* has been accepted and submitted; and
- advance payment has been made.

Processed

Applications are generally processed on a 'first come, first served' basis. Urgent applications which are charged at a higher cost recovery rate, will only be accepted on an urgent basis if capacity is available. SARS may accept or reject such a request.

4.2.2 Starting the application process

The application process starts with the completion and submission of the online application forms through the SARS eFiling system. The system can be accessed on the Internet *via* the SARS website www.sars.gov.za or through the SARS eFiling website www.sarsefiling.co.za. The Advance Tax Rulings website also contains specific instructions in connection with each form to assist in the completion process. The link to Advance Tax Rulings can be accessed after logging in by selecting 'Services' and then 'Other Services'.

Each SARS office has free internet kiosks available for use by taxpayers who require access to the internet for eFiling purposes. Please contact the ATR Unit on 012 422 8589 for guidance through the online application process or to answer any questions you may have.

Note:

All applications must be filed through the SARS eFiling system. The accompanying binding ruling application documentation can also be uploaded on the system. There is a file size limit of 10MB. If this is insufficient, please contact the ATR Unit for further guidance.

4.2.3 The pre-screening checklist

The first form to be completed is the pre-screening checklist. This checklist is a tool to help you determine whether or not your application may be subject to rejection or a discretionary rejection under section 80(2). If your answer to a question indicates that a rejection may apply, an information box will appear that identifies the potential problem.

If your ruling application is subject to a rejection or a discretionary rejection, you will not be able to proceed any further with the application process. In order to proceed to the next screen or step in the application process, no rejection must apply.

Note: 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.

If you are unsure whether or not a discretionary rejection may apply to a specific ruling application, you may forward a brief summary of the issue in question and the reason(s) for your concern to ATRInfo@sars.gov.za. The ATR Unit will inform you whether or not your application would be subject to rejection.

4.2.4 Standard terms and conditions

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 SARS's right to reject your application if any of the exclusions should be found applicable. You are required to accept these terms and conditions before proceeding to the next form (screen).

4.2.5 Contact details and other basic information

If the pre-screening checklist has been completed in full, select the option 'Next' to open the following form. This form, and the other forms that follow, require you to submit certain basic information about yourself and your application, including contact details and the capacity in which you are filing your application (for example, in your individual capacity or in your capacity as a representative or on behalf of a third party or class of persons).

You will also be requested to provide certain general information about the tax types (for example, income tax or VAT) and the issue areas (for example, corporate rules or controlled foreign company rules) raised in your application. This information assists to expedite the processing of your application and to ensure that your application is assigned to the appropriate specialist without delay.

4.2.6 Required statements and consent – sections 80(1)(b)(iii)(aa), 79(4)(n) and 79(4)(l)

Under section 80(1)(b)(iii)(aa), an applicant must submit a statement that to the best of its knowledge, it (or any connected person in relation to it) is not currently the subject of an audit, investigation, objection and appeal, or other proceeding before the Commissioner or the courts in connection with any issue that is the same as or substantially similar to any issue raised in the application.

Under section 79(4)(n) and (o), 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.

In addition, under section 79(4)(l), the applicant must consent to the publication of the final ruling in edited form by SARS in accordance with section 87.

Both the required statements and the consent must be included in your online submission of your application documents. If it is not included, it will result in a delay in the ruling process while awaiting the submission thereof.

4.2.7 Payment of the application fee

The application fee is payable when the ruling application is submitted online. After the online submission, the status of the ruling will reflect as 'Submitted – Unpaid'. Further guiding steps are provided during this status period to assist in the online payment of the application.

If the online payment is not made within 10 business days from the submission date, the application will expire automatically. If you wish to continue with the application, you will have to re-apply online.

4.2.8 Confirmation and assignment to a specialist

Once you have successfully submitted your application forms and paid the application fee, you will receive an electronic confirmation. If the application has been submitted with supporting information and other required submissions, it will now be evaluated for acceptance thereof. If it is accepted, the application will be allocated to a specialist. The specialist will be primarily responsible for reviewing and processing your application and issuing of the binding ruling. A ruling application may still be rejected during the review process if it becomes apparent that an exclusion is applicable.

4.2.9 Supporting information and other required submissions – section 79

Detailed supporting information and other required submissions in connection with your application must be provided. This information is normally uploaded online after the application has been submitted and the advanced payment been made. If the supporting information has not been submitted simultaneously, it must be submitted within five business days thereafter unless an extension is granted in writing.

For additional information regarding the scope and timing of these requirements, as well as how the information should be submitted, please read **4.3** and **Annexure E – Example of a binding ruling application**.

4.2.10 Acceptance or rejection of your application

Once your supporting information and other required submissions have been received, it will be evaluated for acceptance to ensure that none of the conditions for rejection applies. You will receive an electronic notification (Notice of Acceptance) of acceptance within five business days after the submission date of the supporting information and other required submissions.

The estimated cost recovery fee to issue the binding ruling will be published online within five days after acceptance of the ruling application.

4.2.11 Technical assistance

If you experience any technical difficulties when filing your application or paying the application fee you can contact the ATR Unit on 012 422 8589 or email **ATRInfo@sars.gov.za**.

4.3 Supporting information and other required submissions – sections 79(4) and (5)

Under section 79(4), you must submit certain substantive information together with your online application. You are also required to propose a draft version of the ruling to be issued and a description of the confidential information you believe should be deleted from the final ruling before it is published by SARS.

These documents must be submitted together with your online application or alternatively within five business days from the date of the confirmation. It is only upon receipt of all the documents that the application can be processed.

Under section 79(5), SARS may request additional information during the ruling process.

4.3.1 Supporting information

Scope

Under section 79(4), you must submit the following information in connection with your proposed transaction and ruling request:

1. A complete description of –
 - a. the proposed transaction in respect of which the ruling is sought, including its financial and tax implications;
 - b. the impact the proposed transaction may have upon your tax liability or the tax liability of any connected person in relation to you or to any class member, both in principle and practice (by supplying the proposed tax computation);
 - c. any other transaction that you entered into before you filed the application or that you may enter into after filing your 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;

2. A statement of –
 - a. the specific ruling being requested;
 - b. the relevant statutory provision(s) or legal issue(s);
 - c. the reasons why you believe the specific ruling should be granted with reference to the applicable law, but also with reference to the tax benefit you or a connected person will gain or forfeit, depending on whether or not the ruling is granted;
 - d. 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 you are seeking;
 - e. a statement to the best of your knowledge, as to whether the ruling is referred to in section 80 and the list of additional exclusion considerations as published in the *Government Gazette*;
3. A draft version of the BPR or BCR to be issued; and
4. A description of the information that you believe should be deleted from the final ruling before it is published in order to protect the confidentiality of your taxpayer information.

The above information is intended to ensure that SARS has a full picture of the proposed transaction and the potential tax consequences for each of the parties involved. For example, pursuant to **1.a.** above, the description of your proposed transaction must, at a minimum, disclose all of the essential and material terms, all of the parties to it, set forth each step in it, as well as the timing and sequence in which those steps will be carried out, and explain the non-tax purpose for both the overall transaction and each step in it. If your proposed transaction involves multiple steps, you must also include a diagram illustrating those steps.

Similarly, the tax and financial information required under **1.b.** above must generally include a quantification of the anticipated tax impact of the proposed transaction upon you, as well as a detailed cash flow analysis. You must also provide an estimate of the amounts at issue. For example, if you are requesting a specific ruling in connection with the treatment of a proposed dividend for purposes of dividends tax, you must state the amount of that proposed dividend and if this is not possible, you must state why it is impossible and provide an estimate. Similarly, if you are requesting a ruling in connection with the capital gains tax treatment of a proposed disposal of an asset, you must state the amount of the anticipated capital gain.

Finally, pursuant to **1.c.** above, you must provide a description of any other transaction that you have already entered into or may enter into in the future which may have a bearing upon the tax consequences of your proposed transaction. At a minimum, this requirement would apply to any prior transaction that would, or would be likely to render your proposed transaction ineligible for the specific ruling you have requested. Taxpayers are well-advised to err on the side of supplying too much, rather than too little information in this regard. In addition, under **1.c.** above, you must consider any impact that a prior or subsequent transaction might have in connection with the application of any anti-avoidance rule.

Examples

The following examples are intended to help illustrate the application of these requirements:

Example 21

Company A is a member of a group of companies. Its proposed transaction involves the transfer of assets to Company B, another group company. Company A requests a ruling that the transaction will qualify for 'roll-over relief' under section 45 of the Income Tax Act and that no gain or loss will accrue to either company as a result of the transaction. The group of companies, however, is also considering a possible subsequent disposal of more than 30% of the shares of Company B to an unrelated third party. This subsequent transaction would result in Company B ceasing to be a member of the same group of companies as contemplated by section 45(4). Company B would be deemed to have disposed of the assets received for their fair market value at the time of acquisition in a taxable transaction and to have immediately reacquired them for the lower of their market value or base cost on the date of that deemed disposal. In this instance, the possible subsequent transaction would affect the application of section 45 of the Income Tax Act to Company B and must therefore be disclosed pursuant to **1.c.** above.

Example 22

Company A owns 100% of the equity shares of Foreign Company, a controlled foreign company under section 9D(1) of the Income Tax Act. Company A is proposing to dispose of its shares in Foreign Company to Company X. At the time of this proposed transaction, Company X is neither a resident nor a connected person in relation to Company A. Company A requests a ruling that the transaction qualifies for the participation exemption under paragraph 64B(2) of the Eighth Schedule to the Income Tax Act. Company A, however, is also intending to distribute the proceeds from this disposal in the following year of assessment by means of a distribution that would not be subject to Dividends Tax. Pursuant to the specific anti-avoidance rule in paragraph 64B(3) of the Eighth Schedule, that subsequent distribution would render the disposal ineligible for the participation exemption and would make any capital gain determined in respect of that disposal subject to the provisions of paragraph 8(b) of the Eighth Schedule. In the circumstances, the subsequent disposal must be disclosed pursuant to **4.** above.

These examples are given for informational purposes only and are intended solely to illustrate the scope of these requirements. You must ensure that these requirements are satisfied. If you have any questions regarding the scope or application of these requirements, you should consult the specialist assigned to your application.

Note: Under section 84(1), the misrepresentation or nondisclosure of any material fact in connection with your proposed transaction renders your ruling *void ab initio* (from the time it was issued). For additional information in connection with this issue, please read **5.2.1.**

Your statement of the issue(s) raised should be as concise and specific as possible and should be limited to the immediate question that you would like to have resolved in respect of your proposed transaction. If your statement of the issue(s) raised is vague or overly broad, the specialist will have to revise it and this may result in a delay in the issuance of your ruling.

Deadlines for submission

Generally, this supporting information must be submitted within five business days of the date of request. If you do not submit this information within the necessary time period, your application may be rejected without any refund of the application fee. An extension of the time period may be granted if SARS is satisfied that reasonable grounds exist for the delay. Work on the application will not begin until the supporting information is received.

Reconfirmations

If you are applying to have the original binding ruling letter issued to you reconfirmed, the original ruling letter must be attached together with a statement confirming that the facts contained in the original ruling letter have not changed. A finding by SARS that there has indeed been a change of circumstances may lead to the application for a reconfirmation being rejected.

4.3.2 Draft ruling – section 79(4)(f),

You must also submit a draft version of the ruling to be issued. If, on request, you do not submit this draft ruling, your application may be rejected without any refund of the application fee. Work in connection with an application generally will not begin until this draft ruling is received.

An example of a draft ruling may be found in **Annexure E**.

4.3.3 Information to be deleted before publication – section 79(4)(k)

You must also submit a description of the confidential information you believe should be deleted from the final ruling before it is published by SARS.

If you do not submit this description, your application may be rejected without any refund of the application fee. Work on the application generally will not begin until this information is received.

Note that the identity of the taxpayer must be protected by SARS. It may in certain instances be necessary to include information in a published ruling to facilitate communication with the 'class' for whose benefit a ruling has been made. In such instances the applicant must consent in writing to the inclusion of that necessary information.

An applicant may not request that details of the proposed transaction be withheld to protect its identity, or that of the class or any other person mentioned in the application, because section 87(6) provides that the application or interpretation of a tax Act to a transaction is not considered information that might reveal those identities. SARS is legally obliged to publish its rulings subject to taxpayer confidentiality. Taxpayers who are engaged in transactions so unique that their disclosure might compromise those taxpayers are therefore cautioned to consider this aspect carefully before making an application for an ATR.

Reconfirmations and extensions will not be published.

4.3.4 Conditions and assumptions – section 78(3)

SARS may make your binding ruling subject to various conditions and assumptions. These conditions and assumptions must be stated in your ruling. There are two types of conditions and assumptions, namely standard and specific.

The standard conditions and assumptions are included in every binding ruling issued. They address certain basic matters in connection with your ruling, such as the fact that it is based solely upon the information submitted in connection with your application and the tax laws as amended and in effect when the ruling is issued. A copy of these standard conditions and assumptions may be found in **Annexure A**.

Specific conditions and assumptions may be required in connection with your ruling depending on the nature of your proposed transaction and the specific ruling requested.

4.3.5 Organising your submission

Your submission must be accompanied by a 'Documentation Checklist'. This checklist details the different items of supporting information and other required submissions and requires you to indicate either that you are submitting the item in question or that the item is not applicable. For example, the issues raised may relate to a single proposed contract. Under the circumstances, the requirement relating to prior or subsequent transactions that may have a bearing upon the tax consequences of that proposed transaction would not be applicable; only your assurance that it is not applicable, matters in that case.

The 'Documentation Checklist' is available on the SARS website. You can also find a copy of the checklist in **Annexure B**.

Your submission should be submitted in the order set out in the 'Documentation Checklist'. In addition, each item should be clearly identified with an appropriate heading and/or file name. Filenames must then be numbered sequentially to enable the specialist to open those files in the right order.

These requirements are necessary in order to ensure that your application can be reviewed and processed promptly. If different applicants organised their submissions differently or failed to clearly identify the items being submitted, a substantial amount of time would have to be devoted simply to finding relevant information.

The 'Documentation Checklist', together with the supporting information and other required submissions, must be submitted to the ATR Unit before a ruling application can be evaluated for acceptance thereof.

4.3.6 Additional information requested by SARS – section 80(3)

SARS may request additional information in connection with an application at any time. For example, the specialist may request copies of the applicant's most recent financial statements or copies of agreements or draft agreements in connection with the proposed transaction.

The time period for the submission of the additional information requested will be communicated by the specialist assigned to the application and will typically depend upon the volume and accessibility of the information sought. The additional information requested should be uploaded online. It must form part of the record submitted in support of the application. An e-mail to the specialist containing the required information may be helpful,

but it is insufficient, because the specialist is not permitted to submit documents online on your behalf.

If the additional information requested is not provided within the negotiated time period, your application may be rejected without refund of the application fee and you will be held liable for any cost recovery fee incurred up to the date of rejection.

4.3.7 Confidentiality

Any information that you submit is subject to the secrecy provisions of the tax laws and will be kept strictly confidential.

If you are filing an application with one or more co-applicants and you would like to avoid disclosure of certain information to one or more of those co-applicants (for example, trade secrets or 'know how'), you must –

- notify the specialist assigned to your application of your request before submitting that information;
- clearly identify the information in question; and
- clearly specify the co-applicants to whom this restriction would apply.

If these requirements are present in your application, the information in question will not be disclosed to the specific co-applicants.

These procedures must also be followed by any co-applicant to an application who would like to avoid disclosure of certain information to the applicant or to one or more of the other co-applicants.

4.4 Cost recovery fee – section 81(1)

Applications for a binding ruling are subject to a cost recovery fee. If your application is accepted, you will be given an estimate of the anticipated cost recovery fee that will be charged in connection with your application. This estimated cost recovery fee will be communicated to you via an automated e-mail within 5 business days from the date that you receive notification of acceptance of your ruling application.

The cost recovery fee is based on the number of hours that it takes to consider the issues raised in your application, as well as any direct costs incurred in connection with the issuing of the ruling. These direct costs could include travel costs, for example, where a visit to your operations might be helpful. They could also include the costs incurred in obtaining the services of a consultant or expert, for example, an engineer or a scientist, when necessary to advise upon technical aspects of a proposed transaction.

The cost recovery fee will vary depending upon factors such as the number and complexity of the issues raised in your application, the complexity of the proposed transaction itself, and the volume of agreements, documents and other information that must be reviewed.

Reconfirmation applications are subject to an application fee as well as a cost recovery fee based on the complexity levels of the specific reconfirmation required.

4.4.1 Acceptance of the estimated cost recovery fee

The estimated cost recovery fee and time period to issue the binding ruling will be published online through the eFiling system and you will receive an automated e-mail notifying you as such. Should you wish to accept the estimation of the cost recovery fee, please do so online. The estimation is only valid for 15 days. You may request an extension of this period by contacting the specialist. The extension is granted at SARS's discretion.

If the estimation is accepted, the *Letter of Engagement* must be read and the terms and conditions accepted online. A signed copy of the *Letter of Engagement* must be uploaded online or e-mailed directly to **ATRInfo@sars.gov.za**.

Work on the binding ruling application does not commence until the –

- estimated cost recovery fee and time period are accepted online;
- *Letter of Engagement* has been accepted; and
- advance payment has been made. (Please read **4.4.2**.)

Your application may be rejected without refunding the application fee paid if these requirements are not met.

4.4.2 Advance payment requirement

You are also required to pay 20% of the highest range of the estimated cost recovery fee in advance. The advance payment can be made online together with the acceptance of the estimated cost recovery fee and the acceptance of the *Letter of Engagement*.

Work on the application will not commence before the advance payment has been received.

Your application may be rejected without refunding the application fee paid if these requirements are not met.

4.4.3 Revised estimated cost recovery fee – section 81(2)

SARS must notify you if it subsequently appears that the revised cost recovery fee may exceed the original estimated cost recovery fee. This may occur, for example, if you amend your application following its acceptance to reflect changes to the proposed transaction that has been made.

4.4.4 Discussing the original estimated cost recovery fee or revised estimated cost recovery fee

If you are of the view that the original estimated cost recovery fee or the revised estimated cost recovery fee may be too high, you may discuss the matter with the specialist assigned to your application. If an agreement cannot be reached, SARS's determination of the estimated cost recovery fee is final.

If the estimate is not accepted within 15 days, the application may be rejected without refunding the application fee paid.

4.4.5 Payment terms

You will be billed for work performed and expenses incurred on your ruling application. The invoice will be made available online and is payable within 30 days. Interest will incur on amounts that remain unpaid after 30 days.

If the amount still remains unpaid after 60 days, it may be referred to a debt collection agency. You will be held liable for any costs incurred in the collection process.

These payment terms are described in both the standard terms and conditions that are included in the online application forms as well as in the *Letter of Engagement*. An application will only be accepted on these terms.

All payments can be made online.

Note: The final ruling is available online only once the final invoice has been settled.

4.4.6 Payments in arrears – subsequent applications

No new applications will be accepted from the applicant or the applicant's representative until such time as all due payments have been made. In addition, future applications of such applicant or the applicant's representative may be subject to the advance payment of the full estimated cost recovery fee due before work will commence on subsequent applications.

4.4.7 Refunds

SARS may grant a refund of the application fee or cost recovery fee paid in very limited circumstances. They include the following:

- Your application has been accepted, but one or more of the issues becomes subject to a rejection before the ruling is issued (for example, the issue raised becomes subject to a matter pending before the courts).
- If the original estimated cost recovery fee published by the ATR Unit substantially understated the cost recovery fee that would be incurred in connection with your application and the revised estimate cost recovery fee is not acceptable to you. In such a case, a refund of the application fee can only be entertained if the revised estimate cost recovery fee would increase the original estimate cost recovery fee by 50% or more.

Refund requests cannot be accepted based exclusively upon the fact that you received a negative ruling.

If the cost recovery fees you have paid exceed the actual costs that were incurred in connection with your ruling, the excess will be refunded to you following the issuance of the final ruling.

Interest is not payable on any refund. There are no exceptions to this rule.

4.4.8 Estimated time to issue a ruling

You will also be given an estimate of the time required to issue the ruling. This will be communicated online on the *Estimation* screen and once the estimation is accepted, on the *Application Summary* screen.

Applications exclude a number of business days in December and January. The business days from 16 December to 15 January, both days inclusive, will be excluded for purposes of an ATR application. This freeze period is applicable to all applications that are in progress during that period

4.4.9 Estimated time to issue a reconfirmation and an extension

Reconfirmations and extensions will be subject to the same timelines as new applications. The normal time period published online would therefore apply.

4.5 Letter of Engagement

The *Letter of Engagement* must be accepted online before work can commence on your application. The letter contains the basic rights, obligations, terms and conditions in connection with your application and the ruling process. It constitutes a binding contract between yourself and SARS.

4.5.1 Summary of standard terms and conditions – Annexure A

The standard terms and conditions contained in the *Letter of Engagement* include matters relating to billing and payment terms for the cost recovery fee, the obligation of interest on late payments, SARS's right to reject subsequent applications if outstanding fees on current applications are not settled and the right to request the advance payment of the full estimated cost recovery fee on such subsequent applications.

4.5.2 Additional terms and conditions

Depending upon the specific subject matter of your application, SARS may include additional terms and conditions in the *Letter of Engagement*. For example, if it appears that your application will require consultations with an outside expert, the *Letter of Engagement* would include your consent to the use of that expert and the disclosure of information to that expert to the necessary extent.

4.6 Substantive review

The specialist will commence the substantive review of your application as soon as the supporting information and other required submissions, the advance payment and the signed *Letter of Engagement* have been received. The estimated time frame to issue the ruling is calculated from the date that all three requirements have been met.

The substantive review generally involves evaluating the information that you have submitted in connection with your proposed transaction and considering the relevant authorities regarding the issues raised. In some cases, the work may involve a site visit or consultation with an expert such as a scientist or an engineer.

The specialist may request a meeting with you to clarify any aspects of the proposed transaction or issues raised that may be unclear. You may also request a meeting with the specialist during the substantive review process if you believe that it would help to expedite the process.

4.6.1 Checking on the status of your application

You may check the status of your application at any time online using the system-generated ATR reference number allocated to you.

4.6.2 Notification in the event of a proposed negative ruling – section 79(7)

SARS must notify you if it appears that the ruling to be issued differs materially from the proposed ruling you requested (negative ruling). You can consult with the specialist in connection with the matter.

If, following the consultation, SARS still intends to issue a negative ruling, you will be notified again and provided with the opportunity to either change your application or to request that SARS cease work on the application and that no ruling be issued (notice to discontinue). This notice must be filed within 10 business days as from the date of SARS's notice, by withdrawing the application online and forwarding the motivating request through to the specialist.

You will remain liable for all work done on the application up to the date that the application is withdrawn on the system and the motivating request has been received by the specialist. The normal terms and conditions as discussed will apply to all such requests as well.

Note: If a negative ruling is attributable to a problem or defect with a particular aspect of or step within a proposed transaction and you intend to revise the proposed transaction to address that problem or defect, you may request consent to amend your application to reflect the terms of the revised proposed transaction. If SARS consents, you must submit your amended application within the time period negotiated with SARS. If you fail to submit the amended application within this time period, SARS can proceed to issue the negative ruling unless you file a notice to discontinue before the specified time period expires. If you subsequently decide to request a ruling in connection with the revised proposed transaction, you must do so in the form of a new application, subject to the procedures and application fee described above.

4.7 Issuance of the ruling and its publication in edited form

4.7.1 Draft copy for review and comment

If SARS intends to issue a positive ruling, a draft ruling will be issued online for your review and comment. This draft ruling must be carefully reviewed and SARS must be provided with feedback on any possible errors or omissions. Failure to correct a material error or omission may render your ruling *void ab initio* or may result in its subsequent withdrawal or modification. See 5.2 for additional information in connection with these issues.

If corrections are made on the original draft ruling, a new draft ruling will be issued online again for your review and comment.

SARS will not issue the sanitised version of your ruling (edited ruling to be published) or the final ruling unless you confirm in writing or online that you have reviewed the draft ruling and that there are no material errors or omissions in it.

4.7.2 Publication and treatment of confidential information (sanitised or edited ruling) – sections 87(1), (3) and (4)

Once the draft ruling has been approved by the applicant, the sanitised (edited) version will be uploaded online. The final ruling will not be issued until the sanitised version has been approved by you online.

Under section 87(1), SARS must publish binding rulings issued for informational purposes to the general public. The publication thereof is required in order to ensure a level playing field for all taxpayers and to prevent the development of a 'private body of law' by the taxpayers and practitioners who have requested rulings.

However, the ruling must be published in a form that does not reveal the identity of the applicant or other parties to the proposed transaction (confidential information). Confidential information includes –

- the name, address, and other identifying details of the applicant, as well as any person identified or mentioned in the ruling; and
- any information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Under section 87(3), SARS is also required to provide you with a draft of the sanitised (edited) version for your review and comment. SARS must also consider any additional edits or deletions you may propose. 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 the applicant's 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.

4.7.3 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.

5. Effect of an ATR

5.1 General

One of the purposes of the ATR system is to provide greater certainty to taxpayers in connection with the application and interpretation of the tax laws. The TA Act provides that a BPR and BCR may, as the names imply, have a 'binding effect' upon SARS, subject to certain very important requirements and limitations.

The most important limitation is that an ATR only has binding effect upon SARS in respect of the applicant or co-applicant for the ruling in question. In addition, an ATR has this 'binding effect' upon SARS only to the extent that the ruling is actually 'applicable' to that applicant or co-applicant or class of persons. These terms are specifically defined by statute and are discussed in more detail below.

A BCR has binding effect upon SARS in respect of the affected class members identified in the ruling. In addition, a BCR has this 'binding effect' upon SARS only to the extent that the ruling is actually 'applicable' to that affected class of persons.

A third party may not rely upon a binding ruling under any circumstances. In addition, a third party may not cite a BPR or BCR in any proceeding, including court proceedings.

Note: There are certain circumstances in which an ATR may be rendered *void* or lose its binding effect, even with respect to the applicant or co-applicants to which it applies. These situations are discussed in more detail in **5.2** and **5.3**.

5.1.1 Binding effect – section 82(1)

An ATR may have a 'binding effect' upon SARS, subject to certain very important requirements and limitations. In particular, if an ATR 'applies' to you, SARS must interpret and apply the tax laws in question in accordance with the ruling that was given in connection with your application. The term 'applies' has a very precise meaning and is discussed in **5.1.2**.

By definition a BPR or BCR must be in writing. Thus, an oral statement can never have binding effect under section 82. In addition, a written statement can only qualify as a BPR or BCR if it contains a statement identifying it as such in accordance with section 78(5)(a). Thus, any correspondence from SARS without containing a section 78(5) statement can never have a binding effect under section 82.

5.1.2 The applicability of a binding ruling – section 83

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

- (i) the person or class member must be an applicant or an affected class member identified in a binding ruling;
- (ii) the provision or provisions of the tax Act at issue are the subject of the binding ruling;
- (iii) the set of facts and circumstances or the transaction presented by the applicant are the same as the particular set of facts and circumstances or the particular transaction specified in the binding ruling;
- (iv) the applicants' set of facts and circumstances or transaction falls entirely within the effective period for the effective period of the binding ruling; and
- (v) any assumptions made or conditions imposed by SARS in connection with the validity of the binding ruling have been satisfied or carried out.

The binding ruling will not apply to you and will not have any binding effect upon SARS with respect to you, if you fail to satisfy any one of these requirements. This will apply if you are an applicant or an affected class member in connection with that ruling.

5.1.3 No third party reliance – section 82(2)

A binding ruling does not have any binding effect upon SARS unless that binding ruling applies to a person (the applicant) or class member (affected class member) in accordance with section 83. In addition, under section 82(4), a BPR and a BCR may not be cited in any proceeding before SARS or the courts other than a proceeding involving the applicant or affected class member for that ruling. Thus, you cannot rely upon a binding ruling that has been issued to someone else, even if the facts of your proposed transaction are similar to those described in the published ruling.

There are two very important reasons for this limitation. First, many binding ruling applications involve time sensitive transactions. As a result, it is critical that these rulings be issued timeously. Unfortunately, these time pressures inevitably increase the risk of error. If every ruling was to have general force and effect, the potential damage caused by an erroneous ruling would increase exponentially and would necessitate a more lengthy review and quality control process. By restricting the binding effect and precedent value of binding rulings, Parliament has struck a balance between the need to protect the fiscus and the need to provide timely guidance to applicants.

Secondly, binding rulings by their very nature are extremely fact-specific. While a published ruling provides a summary of the proposed transaction at issue, it generally does not and cannot include all of the relevant facts in every case. Something that you may view as a 'minor' difference in your proposed transaction may in fact be a critical difference.

5.2 Circumstances in which a binding ruling may be rendered void or lose its binding effect

The most valuable aspect of a binding ruling is its binding effect. Because of this binding effect, your binding ruling generally provides both guidance and certainty in respect of how SARS will interpret and apply the tax laws to your proposed transaction.

This binding effect is subject to several important requirements, conditions and limitations. Accordingly, there are a number of situations in which your binding ruling may be rendered *void* or lose its binding effect. In some instances, this may happen due to some action (or inaction) on your part. In other instances, it may be due to a change in law or, in some cases, to the subsequent withdrawal or modification of your binding ruling by SARS.

5.2.1 Circumstances rendering a BPR or BCR void – section 84(1)

A BPR or BCR may be rendered *void ab initio* (from the outset) if –

- the facts stated in your application regarding the proposed transaction are materially different from those of the transaction actually carried out;
- there is fraud, misrepresentation or non-disclosure of a material fact; or
- any condition or assumption stipulated by SARS is not satisfied or carried out.

A fact is considered 'material' if it would have resulted in a different ruling had SARS been aware of it when the original ruling was made. If your BPR or BCR is rendered *void ab initio*, it is treated as if it had never been issued at all. Thus, there would be absolutely no binding effect upon SARS whatsoever.

5.2.2 Subsequent changes in the tax laws – section 85

Your ATR may cease to be effective if there is a subsequent change in the tax laws. In general, such changes include the repeal or amendment of the tax laws in question or a subsequent court decision that rejects or modifies the interpretation of the principles upon which your ruling was based. In these cases, the effect is automatic and immediate – no notice from SARS is required.

(a) Amendment or repeal of the relevant tax laws – section 85(1)(a)

Your ATR will cease to be effective if the provisions of the tax laws that were the subject of your ruling are repealed or amended. The impact is prospective only and applies from the effective date of the new legislation.

In the case of an amendment, this rule only applies to the extent that the amendment makes a material change to the specific provisions at the time of issuing your ruling. In this context, a material change would be one that would have resulted in a different ruling if the new provision had been in effect when SARS made the original ruling.

The following examples are intended solely to illustrate the application of this rule:

Example 23

In 2012 SARS issues a ruling that a company will qualify for an allowance under section 12B(h)(ii) of the Income Tax Act for solar energy units used by the taxpayer in the generation of electricity from sunlight. In 2013, the reference to sunlight in section 12B(h)(ii) is changed to solar energy. The change is not material and the ruling will not cease to be effective.

Example 24

Section 2 of the Securities Transfer Tax Act, 2007 is amended in 2013 to levy securities transfer tax on any reallocation of securities from a member's bank restricted stock account or a member's unrestricted and security restricted stock account to a member's general restricted stock account. This is a material change and any rulings issued in respect of securities transfer tax may be affected by this change.

These examples are given for informational purposes only and are intended solely to illustrate the types of situations in which this rule may apply. Due to the nature of this rule, any determination must be made exclusively on a case-by-case basis after a careful review of the facts and circumstances.

If you are unsure of the impact of a subsequent court decision upon your binding ruling, you may request a status ruling from SARS. Status rulings are discussed in **5.2.3**.

(b) Subsequent judicial decisions – section 85(2)

Your ATR will cease to be effective if a court subsequently overturns or modifies an interpretation of the tax laws upon which your ATR was based. If this rule applies, your binding ruling will generally cease to be effective from the date of the decision in question, unless –

- the decision is on appeal;
- the decision is fact-specific and the general interpretation upon which your binding ruling was based was unaffected; or
- the reference to the interpretation upon which your binding ruling was based was *obiter*. The term '*obiter dicta*' generally refers to opinions which judges express in the course of their judgments, but which are not essential to the decision of the matters at issue.

In addition, the rule generally does not apply to a decision, unless that decision is published and has a precedent effect.

Note: The exceptions to this rule only apply to its 'automatic' aspect. Depending upon the facts and circumstances, a subsequent judicial decision may prompt SARS to withdraw or modify your binding ruling in accordance with the provisions of the TA Act. These provisions are discussed in more detail in **5.3**.

(c) No notice by the Commissioner – section 85(2)

Your binding ruling ceases to be effective immediately upon the occurrence of the circumstances described in **(a)** or **(b)** above whether or not SARS publishes a notice of the withdrawal or modification. It follows that –

- if the provision of the tax Act that was the subject of the binding ruling is repealed or amended, the binding ruling will cease to be effective from the date that such repeal or amendment is effective; or
- if a court overturns or modifies an interpretation of the tax Act on which the binding ruling is based, it will cease to be effective from the date of judgement.

SARS is not required to give notice of the above events.

5.2.3 Status rulings

If you are not sure about the impact of a subsequent change in the tax laws upon your binding ruling, you may request a status ruling from SARS. A status ruling gives SARS's view as to whether or not those changes affect your binding ruling (and if so, the extent to which they do so).

The status ruling request must be sent to **ATRInfo@sars.gov.za**.

5.3 Withdrawal or modification by SARS – section 86

SARS may withdraw or modify your binding ruling. A withdrawal or modification is generally prospective in effect. However, there are certain very limited circumstances in which it may be retrospective.

5.3.1 Prior notice

SARS may withdraw or modify your binding ruling at any time. Before such possible withdrawal or modification however, you will be given notice thereof and provided with a reasonable opportunity to state any proposition of law or fact relevant against the proposed withdrawal or modification.

5.3.2 Situations in which an ATR may be withdrawn or modified with retrospective effect

There are certain very limited situations in which SARS may withdraw or modify your binding ruling with retrospective effect. In particular, SARS may do so only if your binding ruling was made in error and **any** of the following three circumstances apply:

- You have not yet commenced the proposed transaction, or have not yet incurred significant cost in respect of the arrangement.
- There is any person other than you who will suffer a significant tax disadvantage if your binding ruling is not withdrawn or amended retrospectively while you will suffer comparatively less if it is withdrawn or amended.
- The effect of your binding ruling will materially erode the South African tax base and it is in the public's interest to withdraw or amend the binding ruling retrospectively.

As with any other withdrawal or amendment, SARS will give you notice thereof and provide a reasonable opportunity to state any opposing proposition of law or fact relevant to that decision. Due to the importance and urgency of these situations, you are requested to respond within five business days from the date of such notice.

5.3.3 Manner and form of the withdrawal or modification

If your binding ruling is withdrawn or modified SARS will issue a notice of that withdrawal or modification to you. This notice will specify the effective date of the withdrawal or modification, which date will not be earlier than the date the decision is delivered to the applicant, unless the circumstances mentioned in section 86(4) and indicated below apply:

- 1) The ruling was made in error.
- 2) a) The transaction has not yet commenced or significant costs have not yet been incurred in respect of the arrangement.
b) A person other than the applicant or class member will suffer significant tax disadvantage if the ruling is not withdrawn or modified retrospectively and the applicant will suffer comparatively less if the ruling is withdrawn or modified retrospectively.
c) The effect of the ruling will materially erode the South African tax base and it is in the public interest to withdraw or modify the ruling retrospectively.

5.3.4 Published rulings – section 87(9)

SARS must publish a notice of withdrawal or modification in the manner and media as the Commissioner may deem appropriate.

In the case of a BPR or a BCR the notice must also be published in such form as does not reveal any confidential information.

6. Miscellaneous

6.1 Questions and additional information

If you have any questions in connection with the ATR system and its process flows or would like additional information, you may contact the ATR Unit. Contact details may be found on the SARS website www.sars.gov.za or you may e-mail ATRInfo@sars.gov.za or phone 012 422 8589.

7. Annexures

Annexure A – Standard conditions and assumptions

Basis of the ruling(s) given in this letter

This ruling letter and the ruling(s) set forth herein are based upon the following:

1. The information, documents, representations, facts considered and assumptions presented being true and accurate;
2. Any legal agreements or contracts entered into (or proposed to be entered into) in connection with the proposed transaction being legally valid and enforceable in accordance with their stated terms, the parties to those agreements timeously satisfying their obligations under those agreements, and those agreements otherwise being carried out in accordance with their terms; and
3. The interpretation and application of tax laws, regulations, binding general rulings, and case law in effect as of the date of this binding private ruling.

The ruling(s) set forth in this ruling letter only apply to the provisions of the tax laws identified in this binding private ruling in connection with the proposed transaction described herein.

The understanding of the South African Revenue Service (SARS) of the proposed transaction

This ruling letter and the ruling(s) set forth herein are based upon the understanding of SARS of the proposed transaction as described herein.

Please note that if you believe that this understanding is incorrect, inaccurate or incomplete, it is your obligation to notify SARS immediately. The failure to rectify a misunderstanding of a material fact may result in the ruling being withdrawn or modified.

Subsequent changes in the tax laws

This binding private ruling letter will cease to be effective in any of the following circumstances:

1. The provisions of the tax laws that are the subject of this binding private ruling are repealed or amended; or
2. A court overturns or modifies an interpretation of the provisions of the tax laws on which the rulings set forth herein are based unless—
 - the decision is on appeal;
 - the decision is fact-specific and the general interpretation upon which the rulings were based is unaffected; or
 - the references in the decision to the interpretation upon which the rulings were based are *obiter dicta*.

In any of these circumstances, the ruling letter will cease to be effective immediately upon –

1. the effective date of the repeal or amendment of the provisions in question, or
2. the date of the reasons for judgment.

SARS is not obliged to notify the applicant, or any co-applicant(s) if applicable, or to otherwise publish a notice of withdrawal or modification.

Fraud, misrepresentation or non-disclosure

1. This binding private ruling letter is void *ab initio* in any of the following circumstances:
 - The proposed transaction is materially different from the transaction actually carried out;
 - There is fraud, misrepresentation or a non-disclosure of a material fact; or
 - Any condition or assumption prescribed in this binding private ruling is not satisfied or carried out.
2. A fact is considered material if it would have resulted in a different ruling had SARS been aware of it when issuing this binding private ruling letter.

Other requirements and limitations

This ruling letter and the ruling(s) set forth herein are also subject to any other requirements and limitations set forth in Chapter 7 of the TA Act, as well as any requirements and limitations set forth in any general binding ruling issued under section 90 of the TA Act.

This ruling letter and the specific ruling(s) set forth in it only apply to the applicant and any co-applicant(s) identified herein. This ruling letter may not be cited in any proceeding, including court proceedings, other than a proceeding involving the applicant or any co-applicant(s) identified herein.

Annexure B – Documentation Checklist

DOCUMENT CHECKLIST ADVANCE TAX RULING APPLICATION

Applicant's Name: _____

Application reference no.: _____

Tax reference no. or Entity registration no.: _____

Agent's Name (if any): _____

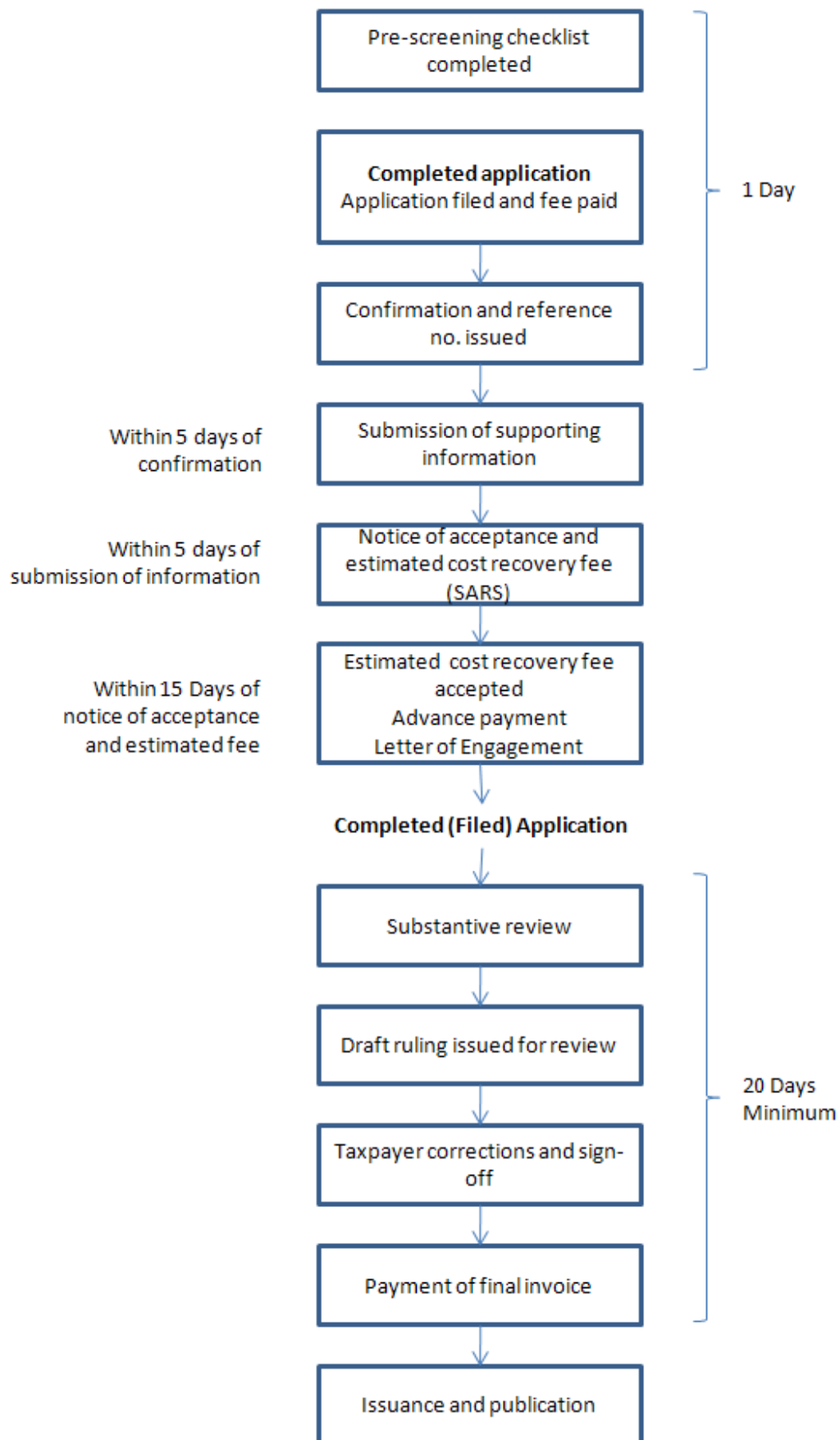
Item	Annexure	Answer	Dependent on facts and circumstances
Power of Attorney (if applicable)	A	Yes	No
Complete description of the proposed transaction	1	Yes	No
Complete description of the impact on your tax liability or any connected person in relation to you, and relevant information regarding the financial or tax implications of the proposed transaction	2	Yes	No
Transactions before or after filing that may have a bearing on the tax consequences of the proposed transaction	3	No	Applicable Not Applicable
Transactions before or after filing the application that may be considered to be part of a series of transactions	4	No	Applicable Not Applicable
A statement of the ruling being requested	5	Yes	No
A statement of the relevant statutory provisions or issues	6	Yes	No
A statement of why you believe the proposed ruling should be granted	7	Yes	No
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 ruling sought	8	Yes	No
Draft version of the ruling	9	Yes	No
Description of confidential information to be deleted before publication	10	Yes	No
Confirmation of payment of application fee	11	Yes	No
Explanatory statement in respect of discretionary rejections that may apply	12	No	Yes

ADDITIONAL SUPPORTING DOCUMENTATION (Contracts, Proposals etc) (Optional unless requested by specialist)

Document Title or Description	Reference

¹ 'You' and 'your' refer to the applicant(s) or co-applicants for the Binding Ruling.

Annexure C – ATR system process flow



Annexure D – Review process



Annexure E – Example of a binding ruling application

The South African Revenue Service
281 Middle Street
Nieuw Muckleneuk
Brooklyn
Pretoria

Dear Sir

Applicant – ATR reference number - xxxx

Binding ruling application relating to tax treatment of the (for example) proceeds from the disposal of shares

1. Introduction

1.1 *Ruling request*

On behalf of the applicant we hereby request a (for example) binding private ruling relating to the tax treatment of (for example) certain proceeds to be received by the applicant from the disposal of shares in a company to be formed ('NewCo').

NOTE: This paragraph should summarise the ruling request.

1.2 *Sections of the Act referred to in the application*

The relevant provisions of the Income Tax Act No. 58 of 1962 ('the Act') referred to in this application are:

- The definition of the term 'gross income' in section 1(1)
- Paragraph 2(1) of the Eighth Schedule to the Act

1.3 *Documents*

Please find attached the following supporting documentation:

- **Annexure A** - Disclosure of required information. This annexure sets out the information required to be submitted in accordance with section 79 of the Tax Administration Act (TA Act).
- **Annexure B** - A letter in terms of section 87(1) of the TA Act whereby the applicants consent to the publication of the ruling by SARS.
- **Annexure C** - The proposed draft ruling.

2. Factual background

2.1 *Background*

This section should provide a complete description of the proposed transaction in respect of which the ruling is sought (section 79(4)(c) of the TA Act). This should include as much information as possible about the applicant and the transaction to ensure SARS's understanding of the proposed transaction.

2.2 Detailed description of the transaction

This section should set out the transaction step-by-step.

3. Relevant provisions of the Act

Statement of the relevant statutory provisions or issues (section 79(4)(g) of the TA Act). This section should set out a statement providing the interpretation of the relevant statute to the proposed transaction.

Example

It is our opinion that the proceeds to be received by the applicant from the disposal of the shares do not fall within the 'gross income' of the applicant and are therefore not subject to income tax in the hands of the trust. Our reasons for this conclusion are set out in detail below.

The relevant portion of the definition of the term 'gross income' in section 1(1) of the Act refers to *'in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident ... during such year ... of assessment, excluding receipts or accruals of a capital nature ...'*

It follows that the amounts in question would be subject to the CGT provisions of the Act. The applicable provision is paragraph 2(1) of the Eighth Schedule to the Act. The relevant portions of that paragraph record that the Eighth Schedule *'applies to the disposal after valuation date of ...any asset of a resident ...'*

4. Tax implications

This section should set out a comprehensive description of the impact the proposed transaction may have upon the tax liability of the applicant or co-applicant, and where relevant, any connected person in relation to the applicant, including any and all relevant information regarding the financial or tax implication of the proposed transaction (section 79(4)(d) of the TA Act).

NOTE: PLEASE ENSURE THAT ALL FINANCIAL INFORMATION APPLICABLE TO THE PROPOSED TRANSACTION IS PROVIDED AND THE RESULTING TAX CONSEQUENCES THEREOF.

5. Application of the law

5.1 General

This section should provide the applicant's interpretation of the relevant statutory provisions or issues (section 79(4)(i) of the TA Act). It should therefore briefly provide the rationale for interpreting the specific section/s of the Act on which a ruling is being sought in the manner as requested.

Example:

We believe that the proceeds from the disposal of the shares to investors do not fall within the 'gross income' of the applicant's trust. This is because we believe that these proceeds will be of a capital nature in the hands of the applicant. It is in respect of this conclusion that we seek a binding private ruling. We consider below the relevant case law which provides support for conclusion.

5.2 **Applicable case law**

This section should provide an analysis of the relevant authorities either considered by the applicant or of which the applicant is aware, whether those authorities support or are contrary to the proposed ruling being sought (section 79(4)(i) of the TA Act). Therefore case law for and against the specific ruling should be given.

6. **Conclusion**

Example

We request SARS's confirmation that, for the reasons outlined above; the proceeds from the disposal from the shares in NewCo would not constitute 'gross income' in the hands of the applicant because they will be receipts of a capital nature. Therefore the proceeds will be subject to paragraph 2(1) of the Eighth Schedule to the Act.

Should you require any additional information or have any questions regarding this application please contact Mr X on (011) xxx-xxxx.

Yours faithfully

Mr X
Director
Tax Practitioner Reg No PR-xxxxxxx

Annexure A Disclosure of required information

Detailed below is the information required to be submitted in accordance with section 79 of the TA Act

a. Applicants

- Applicant's postal address and telephone number – section 79(4)(a)

Applicant name
PO Box xx
Johannesburg
2196
Telephone Number: (011) xxx-xxxx

- Applicant's representative's postal address and telephone number – section 79(4)(b)

Insert representative name
Insert company name
Private Bag X
Johannesburg
2052
Telephone: (011) xxx-xxxx
Fax Number: (011) xxx-xxxx

b. Reasons why the proposed ruling should be granted – section 79(4)(h)

Example

We submit that the proposed ruling should be granted so as to enable the applicant to dispose of the shares in NewCo.

c. Statement in terms of section 79(4)(l)

Example

This ruling application has fully considered the relevant statutory provisions and case law and it is considered that this ruling is consistent with such provisions and law.

d. Statement in terms of section 79(4)(j)

To the best of the applicants' knowledge, and the applicants' representative's knowledge, the same or substantially the same issue upon which this ruling has been sought is not the subject of an audit examination, investigation, ruling application, objection, appeal, or other proceedings currently before SARS or the courts involving the applicant or any connected person in relation to the applicant.

e. Statement in terms of section 79(4)(n) and (o)

To the best of the applicants' knowledge, and the applicants' representative's knowledge, the applicants, including class members if applicable, are fully tax compliant for all applicable taxes.

f. Description of the information the applicant believes should be deleted from the final ruling before publication – section 79(4)(k)

All references to the applicant's name should be deleted from the final ruling before publication in order to protect the applicant's confidentiality. We further suggest that the name of the companies forming part of the proposed transaction should also be deleted.

Annexure B

Letter of Consent

a. Person(s) to whom this ruling applies

This ruling letter has been applied for by ABC Company, tax registration number 123. The co-applicants for this ruling are PQR Company, tax registration number 456, and XYZ Company, tax registration number 789.

b. Relevant tax laws

Sections 79(4)(i) and 87 of the TA Act.

c. Consent

The applicants represented by XYZ legal firm, herewith consent to the publication of the advance tax ruling by SARS in accordance with 87 of the TA Act, provided that the publication is in such a form as does not reveal the identity of the applicants or class members. Before the final publication, SARS will provide a draft copy of the edited ruling for review and comment. It is understood that SARS's determination regarding the contents of the published ruling is final.

Annexure C
EXAMPLE OF A DRAFT RULING LETTER

1. Person(s) To Whom This Ruling Letter Applies

This ruling letter has been applied for by ABC Company, tax registration number 123. The co-applicants for this ruling are PQR Company, tax registration number 456, and XYZ Company, tax registration number 789.

2. Relevant Tax Laws

All legislative references are to the Income Tax Act No. 58 of 1962 (the Act).

The specific ruling has been requested in respect of section 45(4) of the Act.

3. Description of the Proposed Transaction

ABC Company, PQR Company and XYZ Company are all South African companies and are currently members of the same group of companies. ABC Company is the holding company for the group and currently owns 100% of the equity shares of both PQR Company and XYZ Company. PQR Company and XYZ Company are engaged in complementary lines of trade. In order to simplify the structure of the group and to improve efficiency, PQR Company is proposing to transfer all of its assets and liabilities to XYZ Company. Upon the completion of the transfer, PQR Company will liquidate into ABC Company. ABC Company and XYZ Company will continue to be members of the same group of companies.

4. Specific Conditions and Assumptions

Section 78(3) of the TA Act provides that a binding private ruling may be made subject to the conditions and assumptions prescribed in the ruling.

This ruling letter is made subject to the following conditions and assumptions:

- The transfer by PQR Company to XYZ Company constitutes an 'intra-group transaction', as defined in section 45(1).
- ABC Company and XYZ Company will continue to be members of the same group of companies following the proposed transaction.
- This ruling letter does not apply in respect of any tax consequences that may arise if XYZ Company ceases to be a member of the same group of companies as ABC Company.
- The proposed transaction is not part of or connected with any other transaction, operation or scheme.

5. Ruling

The ruling made in connection with the proposed transaction is as follows:

- Pursuant to paragraph (c) of section 45(4), ABC Company and PQR Company will be deemed to be one and the same company for purposes of paragraph (b) of section 45(4).

6. Period for which this ruling letter is valid

This binding private ruling will be valid for a period of [number] [in words] years from the date of the ruling.

Annexure F – Standard ruling timelines

