



# **Legal Counsel**

## **Value-Added Tax**

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### **VAT Rulings Process**

#### **Quick Reference Guide**



*South African Revenue Service*

## Preface

This guide provides information and guidelines on the VAT rulings process. It sets out the steps to be followed when applying for a VAT class ruling or a VAT ruling (collectively referred to as a VAT ruling, unless the context indicates otherwise) and explains certain terms. This guide does not deal with the process to be followed when applying for an advance tax ruling (ATR), which process is also published on the **SARS website**. The differences between a VAT ruling and an ATR, issued under Chapter 7 of the Tax Administration Act 28 of 2011 (TA Act), are set out in **Annexure A**. The issuing of a VAT ruling is governed by section 41B of the Value-Added Tax Act 89 of 1991 (VAT Act) read with Chapter 7 of the TA Act.

The information in this guide is based on the VAT and TA Act legislation as at the time of publishing and includes the amendments contained in the Taxation Laws Amendment Act 25 of 2015 which was promulgated on 8 January 2016 (as per *Government Gazette* (GG) 39588) and the Tax Administration Amendment Act 23 of 2015 which was promulgated on 8 January 2015 (as per GG 39586) respectively.

The information in this guide is issued for guidance only. This guide is not an “official publication” as defined in section 1 of the TA Act and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling under section 89 of Chapter 7 of the TA Act or a ruling under section 41B of the VAT Act unless otherwise indicated.

The previous edition of this guide has been withdrawn with effect from 12 December 2016.

The following guides have also been issued and may be referred to for more information relating to the specific VAT topics:

- *Vendors and Employers: Trade Classification Guide* (VAT / EMP 403)
- *Guide for Vendors* (VAT 404)
- *Guide for Fixed Property and Construction* (VAT 409)
- *Guide for Entertainment, Accommodation and Catering* (VAT 411)
- *Guide for Share Block Schemes* (VAT 412)
- *Guide for Estates* (VAT 413)
- *Guide for Associations not for Gain and Welfare Organisations* (VAT 414)
- *Guide for Municipalities* (VAT 419)
- *Guide for Motor Dealers* (VAT 420)
- *Guide for Short-Term Insurance* (VAT 421)

Should there be aspects which are not clear or not dealt with in this guide, or should you require further information or a specific ruling on a legal issue, you may –

- visit the SARS website at **[www.sars.gov.za](http://www.sars.gov.za)**;
- visit your local SARS branch;
- contact your own tax advisors;
- contact the SARS National Contact Centre –
  - if calling locally, contact the SARS National Contact Centre on 0800 00 7277;

or

- if calling from abroad, contact the SARS National Contact Centre on +27 11 602 2093;
- submit legal interpretive queries on the TA Act by e-mail to **TAAInfo@sars.gov.za**;  
or
- submit a ruling application to SARS headed “Application for a VAT Class Ruling” or “Application for a VAT Ruling” by e-mail to **VATRulings@sars.gov.za** or by facsimile on +27 86 540 9390.

Comments regarding this guide may be e-mailed to **policycomments@sars.gov.za**.

Prepared by

**Legal Counsel**

**SOUTH AFRICAN REVENUE SERVICE**

12 December 2016

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## 1. Terminology

The following terms are used in this guide:

**Applicant:** An “applicant” is the person who applies for a VAT ruling (or on whose behalf an application is filed). If a representative such as a lawyer or accountant files an application on behalf of a third party, that third party is considered the applicant. Similarly, if a person files an application in his or her capacity as a representative taxpayer for another entity such as a company or trust, that other entity is considered the applicant. The application must be accompanied by a POA where an application is filed on behalf of the applicant (that is, by a person acting in a representative capacity).

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

**Business day:** A day which is not a Saturday, Sunday or public holiday and excludes the days between 17 December of each year and 15 January of the following year, both days inclusive.

**Class:** Includes –

- shareholders, members, beneficiaries, or the like in respect of a company, association, pension fund, trust or the like; or
- a group of persons that may be unrelated but are similarly affected by the application of a tax Act to a specific or proposed transaction and agree to be represented by an applicant.

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

**VAT301 form:** An application form that accompanies the detailed VAT ruling application which is applied for under section 41B of the VAT Act. The VAT301 form may be obtained on the **SARS website**. Also refer to **Annexure B**.

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

**Non-binding private opinion:** A non-binding private opinion is meant to provide informal guidance on the VAT treatment of a particular set of facts and circumstances or transaction. A non-binding private opinion does not have “binding effect” upon SARS.

**POA:** A Power of Attorney. A POA should accompany an application where a representative applies for a VAT ruling on behalf of an applicant, granting the representative permission to act on behalf of the applicant. A POA may be obtained from the **SARS website**.

**Senior SARS official:** An official who has specific written authority from the Commissioner to exercise powers and duties required by the TA Act.

**Tax Act:** The TA Act or an Act or portion of an Act, referred to in the SARS Act.

**Transaction:** Any transaction, deal, business, arrangement, operation or scheme and includes a series of transactions.

## 2. VAT ruling or a decision

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

### Example 1 – Application for a decision

*Facts:*

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

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

*Result:*

The Commissioner is required to exercise his discretion in directing that the vendor may be registered on the payments basis. The Commissioner will give effect to the decision by changing the accounting basis to the payments basis (should the vendor qualify to be on the payments basis) and issue a notification accordingly. The application does not qualify as a request for a VAT ruling.

### Example 2 – Application for a VAT ruling

*Facts:*

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

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

*Result:*

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

## 3. VAT rulings application process

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

### 3.1 Form and content of a valid VAT ruling application

The VAT ruling application letter must be accompanied by a duly completed and signed VAT301 form. Additional annexes listed in the VAT301 form as well as any other relevant supporting documents must accompany the VAT ruling application.

An application that is made on behalf of an applicant must be accompanied by a POA. If an application is submitted on behalf of a class, the representative of the class should provide one POA signed by that representative, a list of the class members, their VAT numbers and one VAT301 form.

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

<b>Section 79(4) of the TA Act</b>	<b>Requirements of the application letter</b>
(a)	The applicant's name, VAT registration number (if applicable), postal address, email address and telephone number;
(b)	The name, postal address, email address and telephone number of the applicant's representative, if applicable;
(c)	A full and accurate description of the transaction (including financial implications);
(d)	The impact the transaction might have upon the tax liability of the applicant or class members or if relevant, any connected person in relation to the applicant or class member;
(e)	Any other transaction that was entered into before the application was filed or that the applicant may enter into after filing the application, if that other transaction may have a bearing on the tax consequences of the transaction, or may be considered to be part of a series of transactions involving the transaction;
(g)	The relevant statutory provision(s) or issue(s);
(h)	The reasons why the applicant believes the specific ruling(s) should be granted;
(i)	The applicant's interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities that the applicant considered or is aware of, whether or not it supports the specific ruling(s) the applicant is seeking;
(j)	A statement that none of the grounds for the rejection of the application under section 80 of the TA Act apply to the application;

Section 79(4) of the TA Act	Requirements of the application letter
(m)	In the case of a VAT class ruling – (i) a description of the class members; and (ii) the impact the transaction might have upon the tax liability of the applicant or class members or if relevant, any connected person in relation to the applicant or class member;
(n)	A statement confirming that the applicant(s) complied with any registration requirements under a tax Act with regard to any tax for which the applicant is liable, unless the application concerns a ruling to determine an applicant's liability to register under a tax Act; and
(o)	A statement confirming that all tax returns required to be rendered by the applicant under a tax Act have been rendered and tax has been paid or arrangements acceptable to SARS have been made for the submission of any outstanding returns or for the payment of any outstanding tax. In the case of a VAT class ruling application, the class representative should provide the aforementioned statement on behalf of the class.

**Note:** Any information submitted is subject to the secrecy provisions under section 69 of the TA Act and will be kept strictly confidential.

### 3.2 Submitting the application

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

Please contact the SARS Contact Centre should you have any enquiries regarding your tax affairs, for example, outstanding refunds or returns, registration status etc or require assistance in completing or obtaining a VAT form, return, guide etc.

## 4. Receipt of VAT ruling applications

On receipt of a VAT ruling application, SARS will conduct certain screening tests to determine whether the application can be accepted, whereafter the allocation process can commence.

### 4.1 Screening process

The purpose of this process is to ensure that the required documentation has been submitted and that all requirements are complied with.



The following pre-acceptance and compliance checks will be conducted:

- Confirm that the application letter satisfies the requirements set out in section 79(4) of the TA Act;
- Confirm that the VAT301 form has been completed and signed and that the application letter together with all the relevant annexes are attached (including the POA, where applicable); and
- Confirm that there are no tax returns or tax debts outstanding or if arrangements acceptable to SARS have been made in respect of the outstanding returns or debts.

## 5. Rejections

### 5.1 Rejection of VAT ruling applications

A VAT ruling application **may not** be accepted or **may** subsequently be rejected if –

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

### 5.2 Instances when SARS may reject a VAT ruling application

The relevant subsections of section 80, in terms of which a VAT ruling may be rejected, are set out below:

Section 80(1)	
(a)	<p>An application requesting an opinion, conclusion or determination regarding –</p> <ul style="list-style-type: none"> <li>(i) the market value of an asset;</li> <li>(ii) the application or interpretation of the laws of a foreign country;</li> <li>(iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant or a class member;</li> <li>(iv) the constitutionality of a tax Act;</li> <li>(v) a proposed transaction that is hypothetical or not seriously contemplated at the time the application is filed;</li> <li>(vi) ...</li> <li>(vii) whether a person is an independent contractor, labour broker or personal service provider; or</li> <li>(viii) an application that is submitted for academic purposes.</li> </ul>

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

<b>Section 80(1)</b>	
<b>(b)</b>	<p>An application that contains –</p> <ul style="list-style-type: none"> <li>(i) a frivolous or vexatious issue;</li> <li>(ii) alternative courses of action by the applicant or class member not seriously contemplated; or</li> <li>(iii) an issue that is the same as or substantially similar to an issue that is – <ul style="list-style-type: none"> <li>(aa) 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;</li> <li>(bb) the subject of a policy document or draft legislation that has been published; or</li> <li>(cc) subject to dispute resolution under Chapter 9 of the TA Act.</li> </ul> </li> </ul>
<b>(c)</b>	<p>An application that involves the application or interpretation of a general or specific anti-avoidance provision or doctrine.</p>
<b>(d)</b>	<p>An application that involves an issue –</p> <ul style="list-style-type: none"> <li>(i) that is of a factual nature;</li> <li>(ii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the application;</li> <li>(iii) which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation;</li> <li>(iv) in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction who has not applied for a ruling;</li> <li>(v) in respect of a transaction that is part of another transaction which has a bearing on the issue, the details of which have not been disclosed; or</li> <li>(vi) which is the same as or substantially similar to an issue upon which the applicant has already received an unfavourable ruling.</li> </ul>
<b>(e)</b>	<p>An application that involves a matter the resolution of which would be unduly time-consuming or resource intensive.</p>
<b>(f)</b>	<p>An application that requests SARS to rule on the substance of a transaction and disregard its form.</p>
<b>Section 80(2)</b>	
	<p>The Commissioner may publish by public notice a list of additional considerations in respect of which the Commissioner may reject an application.</p>

Section 80(3)	
	If SARS requests additional information in respect of an application and the applicant fails or refuses to provide the information, SARS may reject the application.

### 5.3 Rejections in terms of the Notice

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

- The liability for VAT of a supplier of goods or services that is not a party to the application.
- The entitlement to deduct input tax in respect of goods or services acquired by a person who is not a party to the application.
- Applications requiring the Commissioner to determine whether a person is acting as an agent or principal in respect of a supply of goods or services.
- The application of section 8(15) and whether a supply of goods or services constitutes a single supply.
- Confirmation that the issuing of a tax invoice, debit or credit note complies with the requirements imposed by any law relating to electronic communications, or that any technical requirements are met in respect of electronic invoicing.
- Confirmation that a supply of accommodation or any right to occupy a building or part thereof, constitutes “commercial accommodation”.
- Confirmation that a supply by a “welfare organisation” to a public authority or a municipality qualifies for the zero-rate under section 11(2)(n).
- Applications for directives or certificates under the laws administered by the Commissioner if other mechanisms have been established by which those directives or certificates may be obtained.
- Applications concerning the attribution, allocation or apportionment of expenditure or input tax for VAT purposes. A request for an alternative apportionment method may, however, be made under section 41B of the VAT Act.
- Applications pertaining to the tax consequences of transactions contained in agreements which have already been concluded, except requests for –
  - rulings or class rulings under section 41B of the VAT Act; or
  - the extension of the validity of a ruling prior to its expiry date, if the facts (including all the terms of the transaction), the applicable provisions of the relevant legislation and the applicable legal principles remained the same.
- Applications in respect of which the applicant has not rendered all tax returns or paid any tax, unless arrangements acceptable to SARS have been made.

## **6. Allocation of a successful application**

### **6.1 Categories of VAT rulings**

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

<b>Category</b>	<b>Estimated time to complete</b>
Basic	20 business days
Involved	45 business days
Complex	60 business days

### **6.2 Letter of acknowledgement**

A letter of acknowledgement (the Letter) will be issued by SARS in the case of a successful application. The Letter will include the following:

- A unique reference number for the application;
- The name of the allocated SARS official responsible for drafting the VAT ruling (the drafter); and
- The category of the VAT ruling application (see **6.1**) and the estimated completion date.

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

The estimated time to completion will be calculated from the date that the application has been accepted (and not the date that the application was submitted).

### **6.3 Request for additional information**

In certain instances, additional information may be requested under section 79(5) of the TA Act in the Letter. This additional information must be submitted within 14 business days (or further period stipulated) from the date of the request unless an extension is granted in writing. No work will commence on the application until the requested information has been submitted. The estimated time to finalise the VAT ruling will also be adjusted accordingly. A notification will be sent to the applicant regarding the change in the estimated date of completion.

Should the information received result in a substantial change to the nature of the application, the number of days to completion may be extended or the VAT ruling may be treated as a new application. You will be informed accordingly.

## **6.4 Substantive review**

Once all the information has been received, the drafter will proceed with the substantive review of the application. During this process, further additional information may be requested. As stated above, the additional information must be submitted within prescribed timelines. Failure to submit the required information within the period stipulated in the request for additional information may result in the application being rejected under section 80(3) of the TA Act.

## **6.5 Meetings**

During the substantive review process, meetings may be required to discuss and clarify the issues pertaining to the application. The applicant may be requested to update the application with additional facts disclosed during these meetings.

## **6.6 Proposed negative VAT ruling(s)**

In the case of a negative VAT ruling (that is, where the VAT ruling to be issued differs materially from the VAT ruling sought), SARS will provide the applicant with an opportunity to make representations, before issuing the VAT ruling.

## **6.7 Issuance of the VAT ruling**

The VAT ruling will be issued once the relevant internal review processes have been finalised and it has been approved and signed-off by the relevant senior SARS official.

All VAT rulings issued must be signed by a senior SARS official within Legal Counsel. Furthermore, it must contain a statement identifying it as a VAT class ruling or a VAT ruling. Any VAT rulings not signed by a senior SARS official, or not containing the said statement, is invalid and not binding on the Commissioner. The VAT ruling will be sent to the address and email address submitted on the VAT ruling application.

**Annexure A – Differences between a VAT ruling and an advance tax ruling**

	<b>VAT rulings</b>	<b>ATR</b>
<b>Submission of application</b>	Prescribed email ( <b>VATRulings@sars.gov.za</b> ) or fax number (086 540 9390)	SARS eFiling
<b>Application fee</b>	None	Yes
<b>Pre-screening checklist to be completed by applicant</b>	No	Yes
<b>Form of application</b>	Complete VAT301 form	Per SARS eFiling
<b>Content of application</b>	Same as ATR except “draft ruling” issued to applicant not required. [Section 41B of VAT Act read with section 79 of TA Act]	Comprehensive [Section 79 of TA Act]
<b>Pre-acceptance test</b>	Yes	Yes
<b>Request for additional supporting documents</b>	Applicant has to submit documents within 14 business days, unless extension is granted.	Applicant has to submit documents within five business days, unless extension is granted.
<b>Cost recovery fee</b>	None	Yes. Depends on complexity of ruling.
<b>Engagement contract</b>	No	Yes
<b>Status check</b>	Drafter listed in the acknowledgement letter and <b>VATRulings@sars.gov.za</b>	eFiling
<b>Proposed ruling / decision</b>	Discuss with applicant if proposed ruling is negative.	Discuss with applicant before finalisation.
<b>Binding status</b>	Binding on the Commissioner	Binding on the Commissioner
<b>Objection and appeal</b>	Not subject to objection and appeal except for section 17(1) rulings	Not subject to objection and appeal

# Annexure B – VAT301 form



**Value-Added Tax** Application for VAT class ruling/VAT ruling in terms of section 41B of the VAT Act

**VAT301**

This form must be completed in full and submitted via email to [VATRulings@sars.gov.za](mailto:VATRulings@sars.gov.za) or faxed to 086 540 9390

## Particulars of Applicant

In the case of a VAT class ruling, attach a list or a description of the affected class members.

Surname or Legal Name																																																																																																				
First Name or Trading Name																																																																																																				
VAT Reference No. (if Applicable)											Company / CC / Trust Fund Registration No. (not applicable to non-residents)											ID No. (not applicable to non-residents)																																																																														

## Business Details

### Physical Business Address and Contact Details

Unit No.											Complex (if applicable)											Business tel no.																			
Street No.											Street / Farm Name											Fax no.																			
Suburb / District																															Cell no.										
City / Town																																									
Postal Code											Website																														
Email																																									

### Postal Address

Mark here with an "X" if same as above or complete your Postal Address

<input type="checkbox"/>																														

Postal Code

### Trade Classification Codes

State main activity										
Activity within major division										
Major division										

REFER TO BROCHURE - VAT/EMP 403 on the SARS website

### Particulars of Tax Practitioner (If Applicable)

Surname / Legal name																															Initials										
																															Tel No.										
Email																															Cell No.										
Tax Practitioner Registration No.											Practice Number																														

**VAT301**

Effective Date: 2013-10-04

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DETAILS OF RULING APPLICATION																																																	
<b>Transaction Details</b>																																																	
<b>Occurrence of transaction</b>																																																	
Past <input type="checkbox"/>										Current <input type="checkbox"/>										Past & Current <input type="checkbox"/>										Past, Current & Future <input type="checkbox"/>										Future <input type="checkbox"/>									
<b>Issues to be considered</b>																																																	
1																																																	
2																																																	
3																																																	
Is there an existing ruling published by SARS on a similar matter? Y <input type="checkbox"/> N <input type="checkbox"/> If yes, state ruling number																																																	
<b>Applicable sections of the VAT Act</b>																																																	
Sections of the VAT Act																																																	
<b>Supporting Documents</b>																																																	
Annexure 1 Detailed ruling request containing: Background, Issue, The Law and Application of the Law, The Ruling Request.																																																	
Annexure 2 A SARS Power of Attorney (available on the SARS website) is required where the application is made on behalf of the applicant.																																																	
Annexure 3 List or description of affected class members. (If applicable)																																																	
Annexure 4																																																	
Annexure 5																																																	
Annexure 6																																																	
<b>Declaration by Applicant</b>																																																	
I hereby declare that:																																																	
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <ul style="list-style-type: none"> <li>I have complied with all my tax obligations;</li> <li>The rejections under section 60 of the Tax Administration Act do not apply to this application;</li> <li>The details contained herein together with the Annexure(s) are true and correct; and</li> <li>I consent to the publication of this ruling as required by the Tax Administration Act.</li> </ul> </div> <div style="width: 45%; text-align: center;"> <p>SIGNATURE</p> </div> </div>																																																	
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"></div> <div style="width: 45%; text-align: center;"> <p>Date (CCYYMMDD)</p> <p>For enquiries go to www.sars.gov.za or call 0800 00 SARS (7277)</p> </div> </div>																																																	