

SOUTH AFRICAN REVENUE SERVICE

BINDING GENERAL RULING (VAT) NO: 2

DATE : 1 January 2007

ACT : **VALUE-ADDED TAX ACT NO. 89 OF 1991, (“the VAT Act”)**
SECTION : **SECTIONS 41 and 72 of the VAT Act**
SUBJECT : **GENERAL WRITTEN RULINGS AND WRITTEN DECISIONS**

1. Purpose

The purpose of this binding general ruling is to provide guidance on the status of rulings issued prior to 1 January 2007 and the process in obtaining confirmation of the binding nature of such rulings.

2. Background

In terms of a proposed amendment which will become effective 1 January 2007, the provisions of section 41(c) of the VAT Act will have no binding effect on the Commissioner with regard to any written decision issued by the Commissioner prior to 1 January 2007 that was in respect of supplies which are, or will be made on or after 1 January 2007. However, the proposed proviso to section 41(c) of the VAT Act makes provision for the Commissioner to confirm in writing the binding nature of any written decision issued prior to 1 January 2007.

3. Ruling

- 3.1. The proposed amendment to section 41(c) of the VAT Act will not withdraw the binding effect of written decisions issued by the Commissioner in respect of supplies that were made on or before 31 December 2006 (i.e. supplies that will not occur after 1 January 2007). These decisions will remain binding and the vendor can rely on such decisions.
- 3.2. With regard to written decisions issued by the Commissioner prior to 1 January 2007, in respect of supplies made or to be made on or after 1 January 2007, vendors who wish to retain the certainty that a binding ruling provides, must apply to the Commissioner for confirmation of the status of the decision.

These requests must be clearly marked as “VAT Rulings Confirmation Request”. A copy of the original application and the ruling issued must be included in the request. Requests must be sent to the following centralised e-mail address or fax number:

Fax number: (012) 422 4443

E-mail: VATRulings@sars.gov.za

Where the Commissioner is satisfied with the previously issued written decision, the Commissioner will issue a written notification to such vendor confirming the binding status of the written decision.

To the extent that the Commissioner is not satisfied with the correctness of the written decision, the Commissioner will issue a written notification to the applicant withdrawing the written decision. In this instance, the vendor can rely on the written decision issued by the Commissioner until such time that the vendor is notified of the effective date of the withdrawal of such written decision.

The period to be allowed for this process will commence on 1 January 2007 and end on 30 June 2007. The expiry dates for lodging requests are as follows:

- Written decisions issued from 1 January 2004 to 31 December 2006: **30 April 2007**;
- Written decisions issued from 1 January 2002 to 31 December 2003: **31 May 2007**;
- Written decisions issued prior to 1 January 2002: **30 June 2007**;
- Written decisions issued to bodies or associations representing certain industries or a class of vendors: **31 May 2007**; and
- Section 72 rulings: **31 May 2007**.

Failure by a vendor to lodge such requests with the Commissioner within the prescribed periods will result in the previously issued written decision being regarded as a non-binding opinion. The effect hereof is that the Commissioner is not bound to interpret or apply the legislation as set out in the written decision in respect of supplies made after the expiry dates stipulated above.

3.3. Any ruling or written decision submitted for confirmation on or before 30 June 2007 will be regarded as a binding decision until such time that the Commissioner notifies the applicant of its status.

3.4. **General written rulings [section 41(a) and (b)]**

Only general written rulings listed in the Rulings Register on the SARS website as well as those contained in Practice Notes, Interpretation Notes and the various issues of Vatnews will continue to be binding to the extent that those rulings are not withdrawn by the Commissioner. In the event that notice is given by the Commissioner that a particular general written ruling or document that contains such a ruling is to be withdrawn, it is recommended that the person who relied on such ruling should apply for either a VAT ruling or a binding private ruling.

3.5. Section 72 rulings

All Section 72 rulings issued prior to 31 December 2006 are withdrawn with effect from 1 June 2007, unless the procedure for lodging a request as mentioned in paragraph 3.2. above has been complied with.

3.6. Other

The view is held that any written statement not specifically mentioned above had no binding effect in terms of section 41 of the VAT Act. To obtain a binding ruling in this regard, an application for a VAT ruling or a binding private ruling as mentioned in paragraph 4. below must be submitted.

3.7. Rulings for which confirmation is not required

Requests relating to any decision pertaining to the following sections of the VAT Act need not be lodged with the Commissioner as these are regarded as binding and do not require confirmation (provided the requirements of section 41(c) have been complied with):

- a) Section 11(3) read with VAT Interpretation Note Nr. 30 of 30 March 2005: Extensions granted to obtain proof of payment up to a maximum of 6 months from the date of the invoice;
- b) Section 27: Determination from the Commissioner in respect of the category of tax period;
- c) The second proviso to Section 27(6): Tax period ending on a day other than the last day of the month as approved by the Commissioner; and
- d) Section 55(4): A determination regarding the retention of records in a format other than hard copies.

4. Conclusion

A further document explaining the procedure to follow when applying for VAT rulings and VAT class rulings will be issued in due course.

Note that the procedures as set out in the ATR Guide, in order to obtain a binding private ruling regarding the application or interpretation of the VAT Act under the Advance Tax Rulings legislation contained in Part 1A of Chapter III of the Income Tax Act, No. 58 of 1962, are not affected by this binding general ruling or the proposed legislative amendments mentioned above.

This ruling is a binding general ruling issued in accordance with section 76P of the Income Tax Act, 1962 as made applicable to the VAT Act by section 41A of the VAT Act. This binding general ruling is effective 1 January 2007.