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## Eminent revamp of Section 72 VAT ruling provisions

The Taxation Laws Amendment Bill B 18-2019 (TLAB) includes various amendments to section 72 of the VAT Act, which has for many years been a contentious section for SARS and National Treasury. In essence, section 72 was originally introduced to enable SARS to issue rulings to overcome difficulties, anomalies or incongruities (hereinafter collectively referred to as “difficulties”) experienced by vendors in complying with any particular section in the VAT Act, in circumstances where the difficulties resulted from the manner in which they conduct their business. A ruling issued in terms of section 72 could only be issued where the ruling did not have the effect of substantially increasing or reducing the ultimate liability for tax levied under the VAT Act. The section further specifically permitted SARS to make an arrangement or a decision so as to overcome the difficulties as to:

- the manner in which a particular provision shall be applied; or
- the calculation or payment of VAT or the application of any zero rate provision or exemption.

In other words, the section granted SARS discretionary powers, similar to those of a legislature, to effectively issue rulings contrary to the law, for as long as the effect thereof did not substantially increase or decrease the ultimate tax liability. This section is one of a kind in VAT and GST regimes globally and has remain controversial due to different views as to its correct interpretation and application, and even its relevance. One of the contentious issues was that the section cannot/should not be used to overcome mere administrative burdensome difficulties. Nevertheless, many vendors have, over the years, requested and have been issued with section 72 rulings, which rulings they are still relying on, since legislative amendments to date have not catered for their unique circumstances.

As far as SARS' discretion is concerned, the amendments to section 72 now add an additional requirement namely, that the difficulties need to be similar to difficulties which have arisen or may arise for any other vendor or class of vendors of the same kind or who make similar supplies. This amendment is welcomed since it ensures that section 72 rulings cannot have the effect of granting preferential treatment to certain vendors over others. The amendments also remove the specific reference to the application of the zero rate or an exemption and replaces it with a proviso that the ruling cannot be contrary to the construct and policy intent of the VAT Act as a whole, or with any specific provision in the VAT Act. This proviso could effectively broaden or narrow the ambit of SARS' discretion, depending on the circumstances. The amendments further specifically include that the Commissioner may publish, by public notice, a list of transactions or matters in respect of which he may decline to make a decision.

The section 72 amendments included in the TLAB are effective from 21 July 2019 and will apply to all section 72 ruling applications made after that date. For existing section 72 rulings the following transitional provisions apply:

- Rulings issued in respect of applications made before 21 July 2019 that cease to be effective on or before 31 December 2021, may be reconfirmed on application by the vendor, no later than two months prior to the expiration of the existing ruling, and such application will be based on the provisions of section 72 prior to its amendment, provided that the effective date of the renewed ruling may not extend beyond 31 December 2021;
- Rulings issued before 21 July 2019 that cease to be effective after 31 December 2021 or that do not specify an effective period, shall automatically cease to be effective on 31 December 2021.

Vendors are thus cautioned to confirm if they rely on any section 72 rulings and if so, consider whether it is necessary to submit applications for extensions of such rulings, should they wish to continue to rely on same. Alternatively, vendors should consider whether their existing ruling can be confirmed in terms of the revised wording of the section, in which case a re-application could be made in terms of the revised section. In addition, it is important for vendors who rely on section 72 rulings, which are unlikely to be re-confirmed in terms of the amended section, to consider how they will deal with their particular difficulties after 31 December 2021.

**For more information, please contact:**



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