

Draft amendments to the rules under sections 40(3)(a)(i)(C) and 41(4)(b) and

120

19 January 2024

GENERAL EXPLANATORY NOTE:

[] Words that are between square brackets and in bold typeface, indicate deletions from the existing rules

Words that are underlined with a solid line, indicate insertions in the existing rules

SOUTH AFRICAN REVENUE SERVICE

No. R.

2024

**CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES**

Under sections 41 and 120 of the Customs and Excise Act, 1964 (Act 91 of 1964), the rules published in Government Notice R.1874 of 8 December 1995, are herewith amended to the extent set out in the Schedule hereto **with effect from.....**

EDWARD CHRISTIAN KIESWETTER

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Insertion of rule

1. The following rule is hereby inserted after rule 40.02:

“Manner in which bills of entry may be adjusted where customs value declared is affected by transfer pricing adjustments

40.03 Where, as a result of a transfer pricing adjustment contemplated in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, an adjustment to a bill of entry is required in terms of section 40(3)(a)(i) in relation to the customs value of goods, the relevant bills of entry may be adjusted by following the process contemplated in rule 41A.01.”.

Insertion of rule

2. The following rule is hereby inserted after rule 41.05:

“Submission of notice of amended invoices or debit or credit notes where customs value is affected by transfer pricing adjustments

41A.01 (a) For purposes of this rule—

“transfer pricing adjustment” in relation to the customs value of goods, means an adjustment contemplated in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, to the price at which goods were imported into the Republic by a multinational enterprise; and

“adjustment period” means the accounting period to which the transfer pricing adjustment relates.

(b) Where in circumstances contemplated in section 41(4)(b)(i)(aa), an exporter has effected an amendment to an invoice by issuing an amended invoice or a debit or credit note to reflect any transfer pricing adjustment, the importer must within the timeframe referred to in section 41(4)(b)(ii)(bb) disclose the circumstances of such transfer pricing adjustment to SARS by submitting a letter of notification on the letterhead of the importer –

(i) via e-mail to the e-mail address indicated on the SARS website for this purpose; or

(ii) by hand to any customs office.

(c) A letter referred to in paragraph (b) must be accompanied by –

(i) a letter of authorisation in respect of submission by a representative in circumstances where the notification is submitted by a registered agent, clearing agent or other representative;

(ii) any relevant amended invoice or debit or credit note issued by the exporter;

(iii) the applicable transfer pricing policy and compensation calculation detailing how transfer prices are determined and adjustments are to be made;

(iv) a spreadsheet reflecting –

(aa) the numbers of all bills of entry affected by changes in customs value declared due to the relevant transfer pricing adjustments;

(bb) the tariff heading of the affected goods;

(cc) the value of the affected goods;

(dd) the adjustment factor used to determine the adjustment to the value as reflected in the transfer pricing policy referred to in subparagraph (iii);

(ee) the effect of the changes indicated on the customs duty and VAT in respect of the relevant bill of entry; and

(ff) a declaration by the importer or that importer's authorised representative that the particulars provided are true and correct;

(v) purchase and sale agreements; if applicable;

(vi) distribution agreements together with all amendments and annexures, if applicable;

- (vii) signed annual financial statements for the relevant adjustment period;
- (viii) segmented financial data relating to the various divisions within the importer's business;
- (ix) royalty and licence fee agreements, if applicable;
- (x) a summary of VAT 201 returns for the adjustment period; and
- (xi) any other relevant documentation required for purposes of validating the retrospective adjustments and assessing the impact of such adjustments on the customs value, duties and VAT payable.

- (d) An importer who has submitted a notification in terms of this rule must comply with any further instructions issued by SARS to such importer in relation to –
- (i) further information to be supplied;
 - (ii) steps to be followed for payment of any duties and VAT payable to SARS; or
 - (iii) steps to be followed for claiming any refund that may be payable to the importer.”.