

EXPLANATORY MEMORANDUM ON THE HEALTH PROMOTION LEVY

AMENDMENT OF PART 7A OF SCHEDULE NO. 1, SCHEDULE NOS. 4, 5 AND 6 OF THE CUSTOMS AND EXCISE ACT, 1964

The draft amendments include the following:

- Amendment of Part 7A of Schedule No. 1;
- Amendment of Schedule No. 4;
- Amendment of Schedule No. 5;
- Amendment of Schedule No. 6;
- Insertion of Rules 541.01 to 541.09;
- Insertion of form DA 179 in the Schedule to the rules; and
- Substitution of forms DA 63, 64, 66 and 185.4B2 in the Schedule to the rules.

1. IMPLEMENTATION OF THE HEALTH PROMOTION LEVY

Government proposed the introduction of a Health Promotion Levy (HPL) on sugary beverages as announced by the Minister of Finance in Budget Review 2016 and further outlined in Budget Review 2017.

The amendment of Part 7 of Schedule No. 1, by the insertion of Section A, to provide for the HPL was promulgated in Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2017, published in *Government Gazette* No. 41323 dated 14 December 2017. The HPL will come into effect on 1 April 2018.

2. Amendments to HPL

After the promulgation of the HPL in December 2017, an executive decision was made by SARS to collect the HPL on pure Duty At Source (DAS) principles. This means that the HPL becomes payable immediately upon entry for home consumption.

As a result of this decision, there are a number of amendments required to effectively administer the HPL on a pure DAS basis. A consequential amendment to Part 7A of Schedule No.1 is also included.

2.1 Amendment of Part 7A to Schedule No. 1

Note 5 to Part 7A of Schedule No. 1 is being amended to align with the revised rules.

The Note will read as follows:

- “5. The sugar content of sugary beverages liable to the levy on sugary beverages must be calculated on -
- (a) the sugar content as certified on a test report obtained and retained from a testing laboratory accredited with and using methodology recognised by the South African National Accreditation System (SANAS) or the International Laboratory Accreditation Cooperation (ILAC); or
 - (b) the deemed sugar content of the sugary beverage that is assumed to constitute 20 grams per 100 milliliters”.

2.2 Amendment of Schedule No. 4

2.2.1 General Note 3 in Schedule No. 4

The General Note is amended to clarify the extent of rebate included in the reference to "full duty", which is deemed to include a rebate of environmental levy as well health promotion levy for purposes of Schedule No. 4.

The Note will read as follows:

"3.

(a) Note 3 to Schedule No. 3 shall apply *mutatis mutandis* in respect of any expression relating to the extent of any rebate in this Schedule. This shall be deemed to include a rebate of any environmental levy payable in terms of Part 3 of Schedule No. 1, subject to the Notes to Part 5 of this Schedule and health promotion levy payable in terms of Part 7 of Schedule No.1.

(b) Note 5 to Schedule No. 3 shall apply *mutatis mutandis* to any reference to a tariff heading or subheading in this Schedule."

2.2.2 Rebate item 499.01

In line with the pure DAS principles, Part 7 to Schedule No. 4 that provided for certain rebates applicable to HPL is deleted. As a result, rebate item 499.01 that provided for an HPL-specific *vis major* loss is deleted. The current rebate item 412.09 will now provide a general *vis major* rebate accessible to HPL going forward, taking the provisions of General Note 3 to Schedule No. 4 into account.

Rebate item 499.02 which provides for goods in respect of which HPL has been paid and entered and used for the manufacture by reprocessing of health promotion levy goods or the manufacture of other goods has now been deleted and item

561.03 in Part 6 of Schedule No. 5 inserted to provide for a refund. As a result, importers of HPL goods will be entitled to a normal DA 66 refund of the HPL if they can prove that the goods have been used in accordance with the provisions of the refund item.

2.3 Amendment of Schedule No. 5

2.3.1 Note 8 is amended to include the reference to section 54J in order to apply for the HPL.

The Note will read as follows:

“8. Notwithstanding any provision to the contrary in this Schedule, for the purposes of items 501.00 to 521.00 in Part 1, items 522.02 to 522.06 in Part 2 and items 550.00 to 551.00 of this Schedule, a refund or drawback of duty as contemplated in section 75(1)(c), 54D or **54J**, shall only be granted if the customs procedure code (CPC) applicable to the export as specified in the list published on the SARS website referred to in rule 00.06 and the relevant refund or drawback item are reflected on the export bill of entry or other export declaration.”

1.3.2 Note 3 in Part 6 of Schedule No. 5

Note 3 in Part 6 of Schedule No. 5 is amended to indicate that the prescribed form must reflect the item applicable and the tax type code.

The Note will read as follows:

2. “Whenever any drawback or refund of health promotion levy is claimed as provided in this Part, any prescribed form for such claim must reflect the item applicable as contemplated in Note 1(b) and also reflect the tax type code.”

2.3.2 Note 3 in Part 5 of Schedule No. 5

Note 3 in Part 5 of Schedule No. 5 is amended as a consequence to the amendment of Part 6 described above.

The Note will read as follows:

3. "Whenever any drawback or refund of environmental levy is claimed as provided in this Part, any prescribed document for such claim must reflect the item applicable as contemplated in Note 1(b) and also reflect the tax type code."

Part 6 of Schedule No. 5 is also amended to include refund item 561.03 for a refund instead of a Schedule No.4 rebate (ex 499.02) to align with the pure DAS principles.

The item is inserted as follows -

561.03/00.00/01.00: Goods in respect of which health promotion levy has been paid and that have been imported and used by a licensee-

- (i) of a warehouse licensed for the manufacture of goods subject to health promotion levy; or
- (ii) an excise manufacturing warehouse licensed for the manufacture of goods not subject to health promotion levy.

Note:

the licensee shall submit only one claim for a refund of health promotion levy per SAD 500.

2.4 Amendment of Schedule No. 6

Part 6 of Schedule No. 6 is amended to change item 690.02 from a rebate to a refund item. Refund item 691.02 is amended to provide for goods that have become contaminated or have undergone post-manufacturing deterioration to be returned

for reprocessing or destruction. As a consequence the existing item 691.03 has been deleted, as it is no longer required. The effects of the amendments are as follows:

- Rebate item 690.01 has been amended to remove the reference to "(b) are being removed in bond" in line with pure DAS principals where no in-bond movements are allowed;
- Rebate item 690.02 has been deleted as a rebate item and inserted as a refund item 691.05 to allow for HPL goods to be used in the manufacture of HPL or excise goods. Upon proof of use in such manufacture, a refund can be claimed on a DA 66;
- With regard to the goods returned for reprocessing as provided for in refund item 691.02, it should be noted that HPL goods are perishables and could in fact become contaminated or off-specification. For this reason, rebate item 691.02 has been amended to align with similar provisions for perishable goods. It allows for reprocessing or destruction and also the necessary control measures, such as customs supervision, documentary evidence, etc.; and
- As a result of the amendment to rebate item 691.02, rebate item 691.03 has become redundant and will be deleted. If the HPL goods are returned, it should either be reprocessed or destroyed.

4. Rules

Rules 54I.01 to 54I.09 in the Customs and Excise Act, 1964 have been drafted to facilitate the imposition of the health promotion levy on sugary beverages. The rules provide for:

- Application of legal provisions

- Persons classified as commercial manufacturers
- Registration and licensing of manufacturers
- Restrictions on customs and excise warehouses
- Closing, submission and payment of accounts
- Determination of sugar content
- Liability for duty
- Restrictions for removal in bond
- Implementation provisions

5 Forms

Forms DA 63, 64 and 66 have been enhanced to facilitate a more efficient and effective refund and drawback claims processes. These improved forms will be substituted in the Schedule to the rules.

Form DA 179 will be inserted in the Schedule to the rules. This form is the account for the payment of the health promotion levy on sugary beverages.

Form DA 185.4B2 was amended to provide for the completion of sugary beverages warehouse particulars and client type for purposes of registration and licensing. This updated form will be substituted in the Schedule to the rules.