

DRAFT FOR EXTERNAL COMMENT 7 SEPTEMBER 2018

**Please note that these rules must be read together with Part A of Chapter XA of the
Customs and Excise Act, 1964**

SOUTH AFRICAN REVENUE SERVICE

No. R.

2018

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

Under sections 77H 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.....**

MARK KINGON

ACTING COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Replacement of rules under section 77H of Act 91 of 1964

1. The rules made under section 77H of the Customs and Excise Act are hereby repealed in its entirety and replaced by the following rules:

“RULES FOR SECTION 77H OF THE ACT

Part A I: General provisions

Definitions

77H.01 In this Chapter, unless the context otherwise indicates—

“aggrieved person” or **“person aggrieved”**, in relation to a decision, means a person affected by the decision that has a right to institute judicial proceedings should that person elect to do so;

“amount to which the appeal relates” means the amount appealed against by the appellant as specified in a notice demanding payment issued by SARS;

“appellant” means an aggrieved person that submits or has submitted an internal appeal, whether personally or through a representative;

“Customs and Excise Branch Office Appeal Committee” means an appeal committee established in terms of rule 77H.11(1)(a);

“Customs and Excise National Appeal Committee” means an appeal committee established in terms of rule 77H.11(1)(c);

“eFiling” means a SARS software application available on the SARS website which enables SARS and registered electronic users to generate and deliver electronic filing transactions;

“Head Office” means the Head Office of SARS;

“Office” means an Office where, depending on the circumstances –

- (a) customs and excise functions are performed;
- (b) customs functions are performed; or
- (c) excise functions are performed;

“person in charge”, in relation to a Branch Office, means the officer or SARS official entrusted with the overall managerial responsibility of that Branch Office;

“SARS taxpayer reference number” means a taxpayer number contemplated in section 24 of the Tax Administration Act, 2011 (Act No.28 of 2011); and

“Tariff, Valuation and Origin Appeal Committee” means an appeal committee established in terms of rule **77H.11(1)(b)**.

Request for reasons for decisions (*section 77D read with section 77H*)

77H.02 (1) A request for reasons contemplated in section 77D(1)(a) must be submitted and in accordance with any instructions issued by SARS in the written communication informing the person of the decision to the Office that communicated the decision or, in the case of a decision relating to the declaration process, the Office indicated on form SAD 500 as the “office of destination or departure”.

(2) A request referred to in subrule (1) must reflect—

- (a) the name and customs and excise client number or SARS taxpayer reference number of the person requesting reasons or, if that person does not have such a client number or SARS taxpayer reference number, the following information:
 - (i) If that person is an natural person, his or her—
 - (aa) full name;
 - (bb) identification document or passport document number;
 - (cc) physical and postal addresses; and
 - (dd) contact details; or
 - (ii) if that person is a juristic entity—
 - (aa) the registered or official name of the entity;
 - (bb) its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country, and if another country, the name of that country;
 - (cc) its physical and postal addresses;
 - (dd) its contact details; and
 - (ee) the name and contact details of a contact person;

- (b) if the request is submitted by a clearing agent, registered agent or other duly authorised representative on behalf of the person referred to in paragraph (a), the following information:
- (i) If the request is submitted by a clearing agent or a registered agent, the name and customs and excise client number of the clearing agent or registered agent; or
 - (ii) if the request is submitted by another duly authorised representative, the name of the representative, and—
 - (aa) if the representative is a natural person, his or her—
 - (A) SARS taxpayer reference number or, if he or she does not have a SARS taxpayer reference number, the number of his or her identification document or passport; and
 - (B) contact details and any physical and postal addresses in the Republic; or
 - (bb) if the representative is a juristic entity—
 - (A) its SARS taxpayer reference number or, if it does not have a SARS taxpayer reference number, its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country and, if another country, the name of that country;
 - (B) its contact details and any physical and postal addresses in the Republic; and
 - (C) the name and contact details of a contact person;
- (c) the physical or electronic address to which reasons and any documents relating thereto must be sent, if applicable;
- (d) particulars of the decision for which reasons are requested in sufficient detail to enable SARS to identify the decision, including any case reference number indicated in the communication referred to in subrule (1); and
- (e) the date of the request.

(3) (a) A person that requested reasons is entitled to a written acknowledgement of receipt from SARS indicating the date of receipt of the request, subject to paragraph (b).

(b) Paragraph (a) does not apply if the person requesting reasons, in the case of request submitted otherwise than through eFiling, did not comply with subrule (2)(c).

(4) A person that requested reasons must be notified of such reasons in writing within 45 days from the date of acknowledgement of receipt referred to in subrule (3)(a).

(5) If an aggrieved person intends to submit an appeal against a decision in terms of rule **77H.04** and wishes to request reasons for such decision, a request referred to in subrule (1) must be submitted within 30 days from the date the aggrieved person became aware of the decision.

Application for Commissioner to direct suspension of amounts payable to Commissioner (*section 77G read with 77H*)

77H.03 (1) If a person aggrieved by a decision intends to submit an appeal against the decision in terms of rule **77H.04** and wishes to apply for the suspension of a disputed or affected payment pending conclusion of the appeal proceedings, that person must submit an application for suspension within the relevant timeframe for submission of an appeal as set out in rule **77H.04(2)**.

(2) An application referred to in subrule (1) must be submitted—
(a) electronically through—
(i) eFiling, if this mode of submission is available for such applications; or
(ii) e-mail; or
(b) by delivering the document by hand.

(3) Details for submission of an application in terms of subrule (2)(a)(ii) or (b) are the following:

- (a) If sent through e-mail, the e-mail must be directed to the e-mail address indicated on the SARS website for the Office –
 - (i) that communicated the decision to the appellant; or
 - (ii) indicated on form SAD 500 as the “office of destination or departure”, in the case of an appeal relating to the declaration process; or
- (b) if delivered by hand, the application must be submitted to the Office referred to in paragraph (a)(i) or (ii), depending on the circumstances.

(4) An application referred to in subrule (1) must state the following information:

- (a) The applicant’s name and customs and excise client number or, if the applicant does not have such a client number, the information specified in rule **77H.02(2)(a)(i)** or (ii);
- (b) if the application is submitted by a clearing agent, registered agent or other duly authorised representative on behalf of the applicant, the information specified in rule **77H.02(2)(b)(i)** or (ii);
- (c) particulars of the decision in respect of which the suspension payment is requested in sufficient detail to enable SARS to identify the decision, including any case reference number indicated in the communication informing the applicant of that decision;
- (d) particulars of the disputed or affected payment which the applicant seeks to have suspended, including the case reference number indicated on the notice demanding payment; and
- (e) the reason why the suspension of the payment is sought.

(5) The following documents must support an application referred to in subrule (1):

- (a) The applicant’s bank statements for a period of six months preceding the application, certified by the bank;
- (b) if the applicant is a juristic entity, a certified copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity; and

(c) a certified copy of the identification document of an authorised person referred to in paragraph (b).

(6) An applicant is entitled to a written acknowledgement of receipt from SARS, indicating the date of receipt of the application.

(7) The factors to be taken into consideration when deciding an application referred to in subrule (1) are the following:

- (a) The amount of the disputed payment;
- (b) the compliance history of the applicant;
- (c) the risk of dissipation of assets by the applicant during the period of suspension;
- (d) the reasons for suspension as submitted by the applicant;
- (e) whether the applicant has provided or is able to provide adequate security for the payment of the amount;
- (f) whether payment of the amount would result in irreparable financial hardship to the applicant;
- (g) whether sequestration or liquidation proceedings are imminent; and
- (h) whether fraud is involved in the origin of the dispute.

(8) A suspension of payment granted to a person pursuant to an application in terms this rule may at any time be withdrawn—

- (a) if eventual recovery of the disputed payment is compromised by the actions of that person;
- (b) if that person abuses the proceedings, including by—
 - (i) unreasonably delaying institution or conclusion of the proceedings;
 - (ii) consistently raising frivolous, vexatious or irrelevant issues in the proceedings; or
 - (iii) employing any dilatory tactics in the proceedings;
- (c) if on further consideration of the factors referred to in subrule (7), the suspension should not have been granted;
- (d) if there is a material change in any of the grounds on which the suspension was granted; or

- (e) on any other good ground.

Part A II: Submission of administrative appeals

Submission of appeals (*section 77C read with section 77H*)

77H.04 (1) An appeal against a decision must within the timeframe referred to in subrule (2) be submitted—

- (a) electronically through—
 - (i) eFiling, if this mode of submission is available for submission of an appeal; or
 - (ii) e-mail; or
- (b) by delivering the document by hand.

(2) (a) The timeframe within which an appeal referred to in subrule (1) must be submitted is –

- (i) within 30 days from the date the appellant became aware of the decision, or if reasons were requested for the decision in terms of rule **77H.02**, within 30 days from the date of receipt of the reasons; or
- (ii) if the date on which the appellant became aware of the decision is in dispute, within 30 days from the date on which the applicant is reasonably expected to have become aware of such decision.

(b) A timeframe referred to in paragraph (a) may on application in terms of rule **77H.05** be extended by the Commissioner by no more than 15 days.

(3) An appeal submitted in terms of subrule (1)(a)(ii) or (b), must—

- (a) be on Form DA 51; and
- (b) be submitted by making use of the details specified in subrule (4).

(4) Details for submission of an appeal in terms of subrule (1)(a)(ii) and (b) are the following:

- (a) If sent through e-mail, the appeal must be directed to the e-mail address indicated on the SARS website for the Office –
 - (i) that communicated the decision to the appellant; or
 - (ii) indicated on form SAD 500 as the “office of destination or departure”, in the case of an appeal relating to the declaration process; or
- (b) if delivered by hand, the appeal must be submitted to the Office referred to in paragraph (a)(i) or (ii), depending on the circumstances.

(5) An appeal referred to in subrule (1) must reflect—

- (a) the name and customs and excise client number or SARS taxpayer reference number of the appellant or, if the appellant does not have such a client number or SARS taxpayer reference number, the information specified in rule **77H.02(2)(a)(i)** or (ii), with the necessary changes;
- (b) if the appeal is submitted by a clearing agent, registered agent or other duly authorised representative on behalf of the appellant, the information specified in rule **77H.02(2)(b)(i)** or (ii), with the necessary changes;
- (c) particulars of the decision appealed against in sufficient detail to enable SARS to identify the decision, including any case reference number indicated in the communication informing the applicant of the decision;
- (d) the grounds upon which the appeal is based;
- (e) any new information which may impact the decision on appeal which was not available at the time when the decision was taken;
- (f) the physical or electronic address to which the the decision on appeal and any documents or communications relating thereto must be sent;
- (g) the date and signature of the appellant or the appellant’s authorised representative; and
- (h) any other information that may be required for purposes of the appeal.

(6) An appeal referred to in subrule (1) must be supported by the following documents:

- (a) If the appellant is a juristic entity—

- (i) a certified copy of the document authorising the person who submitted the appeal on behalf of the entity, to act on behalf of the entity; and
 - (ii) a certified copy of the identification document of an authorised person referred to in subparagraph (i);
- (b) a certified copy of the document authorising a person contemplated in subrule (5)(b) to act as the representative of the appellant;
- (c) any documentary evidence substantiating—
 - (i) the grounds for appeal on which the appellant relies; and
 - (ii) any new information referred to in subrule (5)(e); and
- (d) any other documents as may be required for purposes of considering the appeal.

(7) (a) An appellant is entitled to a written acknowledgement of receipt from SARS indicating the date of receipt of the appeal, subject to paragraph (b).

(b) Paragraph (a) does not apply if the appellant, in the case of appeals submitted otherwise than through eFiling, did not comply with subrule (5)(f).

Application for extension of timeframe within which internal appeal must be submitted (*section 77D read with section 77H*)

77H.05 (1) An appellant that requires an extension of the period within which an appeal must be submitted, must before expiry of the timeframe referred to in rule **77H.04(2)(a)** apply for extension in terms of this rule.

- (2) An application referred to in subrule (1) must be submitted –
 - (a) electronically through –
 - (i) eFiling, if this mode of submission is available for submission of such applications; or
 - (ii) e-mail; or
 - (b) by delivering the document by hand.

(3) An application referred to in subrule (1) (1)(a)(ii) and (b) must be submitted by making use of the details specified in rule **77H.04**(4)(a) or (b).

(4) An application referred to in subrule (1) must reflect the following particulars:

- (a) The name and customs and excise client number or SARS taxpayer reference number of the appellant or, if the appellant does not have such a client number or SARS taxpayer reference number, the information specified in rule **77H.02**(2)(a)(i) or (ii), with the necessary changes;
- (b) if the application is submitted by a clearing agent, registered agent or other duly authorised representative on behalf of the appellant, the information specified in rule **77H.02**(2)(b)(i) or (ii), with the necessary changes;
- (c) particulars of the decision to be appealed against in sufficient detail to enable SARS to identify the decision, including any case reference number indicated in the communication informing the applicant of that decision; and
- (d) the reason why an extension is required.

Incomplete appeals (*section 77H*)

77H.06 (1) If an appeal submitted in terms of rule **77H.04** does not comply with all the requirements for a complete appeal set out in that rule, the appellant is entitled to be notified in writing of the outstanding requirements within 20 days after acknowledgement of receipt referred to in rule **77H.04**(7) had been conveyed to the appellant.

(2) A notification referred to in subrule (1) must—

- (a) reflect the date of notification;
- (b) state the reason for the appeal being incomplete;
- (c) list the outstanding information, documents or samples required for the appeal to be considered complete; and
- (d) contain instructions for submission of the outstanding information, documents or samples.

(3) (a) An appellant notified of an incomplete appeal in terms of this rule and who wishes to continue with the appeal must within 15 days after such notice comply with the outstanding requirements.

(b) The timeframe referred to in paragraph (a) may on application in terms of rule **77H.07** before expiry of such period, be extended on reasonable grounds.

(4) If an appellant does not comply with a request to submit outstanding information or documents required for consideration of the appeal within the timeframe referred to in subrule (3)(a) or within an extended timeframe contemplated in subrule (3)(b), the appeal lapses.

Application for extension of timeframe for purposes of compliance with outstanding requirements in relation to incomplete appeal

77H.07 (1) An appellant that requires an extension of the timeframe contemplated in rule **77H.06(3)(a)**, must apply for extension in terms of this rule.

(2) An application referred to in subrule (1) must be submitted –
(a) electronically through–
(i) eFiling, if this mode of submission is available for submission of such applications; or
(ii) e-mail; or
(b) by delivering the document by hand.

(3) An application referred to in subrule (1) must be submitted in accordance with any instructions issued by SARS in the notification of outstanding requirements in terms of rule **77H.06(1)**.

(4) An application referred to in subrule (1) must reflect the following particulars:

(a) The name and customs and excise client number or SARS taxpayer reference number of the appellant or, if the appellant does not have

- such a client number or SARS taxpayer reference number, the information specified in rule **77H.02(2)(a)(i)** or (ii), with the necessary changes;
- (b) if the application is submitted by a clearing agent, registered agent or other duly authorised representative on behalf of the appellant, the information specified in rule **77H.02(2)(b)(i)** or (ii), with the necessary changes;
 - (c) the reference number of the notification relating to outstanding requirements in terms of rule **77H.06(1)**; and
 - (d) the reason why an extension is required.

Time within which appeals must be decided (*section 77D read with section 77H*)

77H.08 (1) An appeal must be decided –

- (a) within 60 days from the date of submission of the appeal in accordance with rule **77H.04**; or
- (b) if the appeal was incomplete, within 60 days from the date on which the complete appeal was submitted.

(2) The Commissioner may extend the period referred to in subrule (1) by no more than 30 days, if the Commissioner is of the opinion that more time is required to decide the appeal due to exceptional circumstances or the complexity of the matter.

Withdrawal of appeal (*section 77H*)

77H.09 (1) If an appellant wishes to withdraw an appeal submitted in terms of rule **77H.04** the appellant must submit a notification of withdrawal—

- (a) electronically through—
 - (i) eFiling, if this mode of submission is available for such notifications; or
 - (ii) e-mail; or
- (b) by delivering the document by hand.

(2) A notification in terms of subrule (1)(a)(ii) or (b), must be submitted by making use of the details specified in rule **77H.04(4)**.

(3) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs and excise client number or SARS taxpayer reference number of the appellant or, if the appellant does not have such a client number or SARS taxpayer reference number, the information specified in rule **77H.02(2)(a)(i)** or (ii), with the necessary changes;
- (b) if the request is submitted by a clearing agent, registered agent or other duly authorised representative on behalf of the appellant, the information specified in rule **77H.02(2)(b)(i)** or (ii), with the necessary changes;
- (c) particulars of the appeal withdrawn; and
- (d) the date and signature of the appellant or the appellant's authorised representative.

Part A III: Appeal committees

Decisions to be dealt with by appeal committees (*section 77H*)

77H.10 An appeal against a decision of an officer or a SARS official must be dealt with by the appropriate appeal committee as set out in rule **77H.11**.

Establishment and jurisdiction of appeal committees (*section 77E read with 77H*)

77H.11 (1) The following internal appeal committees are hereby established:

- (a) A Customs and Excise Branch Office Appeal Committee—
 - (i) at any Branch Office as may be approved by the SARS official responsible for managing internal appeals at Head Office; or

- (ii) for a number of Branch Offices as may be approved by the SARS official responsible for managing internal appeals at Head Office;
- (b) a Tariff, Valuation and Origin Appeal Committee at Head Office; and
- (c) a Customs and Excise National Appeal Committee at Head Office.

(2) (a) A Customs and Excise Branch Office Appeal Committee must, subject to paragraph (b), consider and decide appeals in respect of any decision taken by an officer or SARS official, other than the person in charge of the Branch, stationed—

- (i) at the Branch Office for which that appeal committee was established; or
- (ii) in the case of an appeal committee referred to in subrule (1)(a)(ii), at any of the Branch Offices for which that Branch Appeal Committee was established.

(b) A Customs and Excise Branch Office Appeal Committee may not consider and decide an appeal—

- (i) if, in the case of an appeal in respect of which it is possible to quantify an amount to which the appeal relates, such amount exceeds R10 000 000; or
- (ii) in relation to any decision involving a determination of the tariff, value or origin of goods.

(3) The Tariff, Valuation and Origin Appeal Committee must consider and decide appeals in relation to all decisions involving a determination of the tariff, valuation or origin of goods, taken at Branch Office level irrespective of the amount to which the appeal relates.

(4) The Customs and Excise National Appeal Committee must consider and decide appeals in relation to any decision involving—

- (a) a matter relating to licensing, registration or accreditation;
- (b) a determination of the tariff, value or origin of goods, taken at Head Office level;

- (c) a decision taken at Branch Office level –
 - (i) by a person in charge of a Branch Office; or
 - (ii) in respect of which the amount to which the appeal relates is more than R10 000 000, in the case of an appeal in respect of which it is possible to quantify an amount; and
- (d) a matter other than those listed in subparagraphs (a) to (c), as the Commissioner may direct.

Composition of appeal committees (*section 77H*)

77H.12 (1) An appeal committee referred to in rule **77H.11(1)** consists of—

- (a) a Chairperson who is—
 - (i) the person in charge of the relevant Branch Office, in the case of a Customs and Excise Branch Office Appeal Committee referred to in rule **77H.11(1)(a)(i)**;
 - (ii) the person in charge with the highest SARS ranking amongst the persons in charge of the Branch Offices for which the relevant appeal committee was established, in the case of a combined appeal committee referred to in rule **77H.11(1)(a)(ii)**;
or
 - (iii) the officer or SARS official responsible for managing internal appeals at Head Office, in the case of—
 - (aa) the Tariff, Valuation and Origin Appeal Committee referred to in rule **77H.11(1)(b)**; and
 - (bb) the Customs and Excise National Appeal Committee referred to in rule **77H.11(1)(c)**; and
- (b) at least four additional committee members with the necessary knowledge and skills to consider and deal with an appeal brought before the relevant appeal committee appointed, subject to subrule (2), by the Chairperson—
 - (i) from officers or SARS officials—
 - (aa) under his or her control, in the case of an appeal committee referred to in paragraph (a)(i); or

(bb) representing each of the Branch Offices for which the appeal committee is constituted, in the case of an appeal committee referred to in paragraph (a)(ii):

Provided that in the case of an appeal involving an excise matter, members may include officers or SARS officials with the relevant specialised knowledge of excise who do not fall within the categories referred to in item (aa) and (bb); or

(ii) in the case of an appeal committee referred to in rule **77H.11(1)(b)** and (c), from officers or SARS officials, irrespective of whether such officers or officials are under the control of the Chairperson or from other divisions or regions of SARS.

(2) The Chairperson of an appeal committee –

- (a) may appoint more than four additional committee members as contemplated in subrule (1)(b), provided that the total number of members of the appeal committee must be an uneven number; and
- (b) must ensure that at least one of the members appointed is a legal advisor.

Powers and duties of appeal committees (section 77H)

77H.13 An internal appeal committee established in terms of rule **77H.11** must—

- (a) keep a register of all appeals referred to such committee in which the relevant particulars of each appeal is recorded;
- (b) ensure that the appellant is notified of an incomplete appeal in accordance with rule **77H.06**, if applicable;
- (c) consider any appeal referred to it;
- (d) make a decision on the appeal within the timeframe contemplated in rule **77H.08** and ensure that the appellant is notified in writing of the outcome;
- (e) keep record of all proceedings and decisions of the committee; and
- (f) ensure, in the case where a decision necessitates changes to SARS operational procedures, that the matter is brought to the attention of the appropriate line function head within SARS for appropriate action.

Procedural matters relating to the operation of appeal committees
(section 77H)

77H.14 The convening of, and procedures at, meetings of an appeal committee established in terms of rule **77H.11** including quorum requirements, as well as any other matter necessary for the proper functioning of the appeal committee, must be in accordance with any applicable terms of reference regulating the procedural matters and operational requirements of the relevant appeal committee, issued by SARS and published on the SARS website.”.

Transitional arrangements

2. These rules do not apply to a decision taken before(effective date) and any request for reasons or any appeal must be submitted and dealt with in accordance with the rules for section 77H of the Customs and Excise Act, 1964, as it existed immediately before such date.