

EXCISE

EXTERNAL POLICY

**HEALTH PROMOTION LEVY ON SUGARY
BEVERAGES**

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1 SUMMARY OF MAIN POINTS

- a) This document applies to manufacturers in the sugar beverages industry.
- b) This policy does not cover:
 - i) Customs and Excise Payments as this is dealt with in document BP-02;
 - ii) eAccount on eFiling for Excise as this is dealt with in document EA-01-M01;
 - iii) Declaration and Return submission via eFiling as this is dealt with in document SE-ACC-02;
 - iv) Prescribed payment terms/periods as these are dealt with in document SE-PAY-02;
 - v) Submission of accounts/returns as this is dealt with in document SE-CL-12;
 - vi) Licensing and Registration requirements as these are dealt with in document SE-LR-02;
 - vii) Bonds as this is dealt with in document SE-BON-02;
 - viii) Introduction to Excise duties, Levies and Air Passenger Tax (APT) as this is dealt with in document SE-GEN-GEN-04;
 - ix) Refunds as these are dealt with in document SE-REF-07;
 - x) Tariff Determination as these are dealt with in document SE-TDN-02 and
 - xi) The completion of the DA 179 and Schedule – Health Promotion Levy Return for Sugary Beverages as this is dealt with in document SE-SB-03-M01.

2 POLICY

2.1 Implementation of the Health Promotion Levy (HPL) on Sugary Beverages

- a) Health Promotion Levy (HPL) is legislated in Chapter VB of the Customs and Excise Act No. 91 of 1964 and the Rules thereto. Any provisions, as reflected in Chapter VA and its rules of the Act except as otherwise provided in Chapter VB and the rules shall, as may be applicable, apply to any Health Promotion Levy goods manufactured in or imported into South Africa.
- b) HPL is imposed on sugary beverages manufactured in South Africa in terms of item 191.00 in Section A of Part 7 of Schedule 1. The levy so specified on the items shall be payable in addition to any duty prescribed in respect of the goods concerned.
- c) Any person who manufactures sugary beverages on the date these rules come into operation or intends manufacturing sugary beverages must apply on a DA 185 and the appropriate annexure:
 - i) If he or she qualifies as a non-commercial manufacturer, for registration as a non-commercial manufacturer of sugary beverages in terms of Section 59A and the rules thereto; or
 - ii) If he or she is classified as a commercial manufacturer:
 - A) Register as a commercial manufacturer of sugary beverages in terms of Section 59A and the rules thereto; and
 - B) License his or her manufacturing premises as a customs and excise manufacturing warehouse for the commercial manufacture of sugary beverages.
- d) Any person who manufactures, a sugary beverage containing 4 grams per 100ml or less but the sugar content exceeds the 500 kilograms (Rule 541.02) per calendar year, will be required to license as a commercial manufacturer and submit “**NIL**” returns.
- e) Unless the Commissioner determines otherwise, no security is required to be furnished by a person applying for registration as a non-commercial manufacturer of sugary beverages.
- f) Any reference to sugar means both the intrinsic and added sugar and other sweetening matter contained in any sugary beverage.
- g) Any person who manufactures or imports any sugary beverage that is liable to the HPL must determine and declare the sugar content of the sugary beverage based on:
 - i) The total sugar content in g/100ml of the sugary beverage as certified on a valid 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); and

- ii) The report referred to in item (i) above must be kept available for inspection for a period of five (5) years from the date the sugary beverage was manufactured or imported and must be produced or submitted at the request of an Officer; or
 - iii) The sugar content that is used for the calculation of the SBL liability is either the actual sugar content of the SBL good as substantiated on an acceptable laboratory test report or the deemed sugar content of 20g/100ml. The declaration of the sugar content in respect of an SBL good with a deemed sugar content must therefore be reflected as 20g/100ml on the DA 179. In practice, the system will apply the normal SBL calculation that first subtracts the threshold of 4g/100ml exempt sugar content from the declared sugar content in the calculation of the final SBL liability; and
 - iv) In the case of powder and liquid concentrates or preparations for the making of beverages, the sugar content shall be determined based on the total volume of the prepared beverage when mixed or diluted according to the manufacturer's product specifications.
- h) For the purposes of Rules 54F.10 to 54F.12, sugary beverages manufactured in South Africa may only be entered for removal in bond and exported from a Customs and Excise warehouse (VM) to any place outside South Africa or any place in any other country in the Common Customs Area (CCA). If licensees do not make use of their own transport, a licensed Remover of goods in bond (ROG) must be used.
- i) All licensees must be registered for eFiling as the submission of the returns and payments can only be made via eFiling. Accounts and payments must be submitted as prescribed in the rules in the format and in accordance with the procedures specified in the eFiling service [Rule 119A.R101A(d)]. Other payment methods may only be used if the eFiling service is not available (refer to BP-02). Licensees can register for eFiling on the SARS Website (www@sars.gov.za).
- j) If licensees are unable to access the eFiling service, they must visit the nearest SARS Branch Office (B/O) for assistance. The licensee must present the return [DA 179 and DA 179.01 (in an electronic format)] and the B/O will upload the CSV and capture any other required information on Service Manager (SM). A printed copy of the EXD 01 with the PRN will be handed to the licensee for payment.
- k) The following provisions have also been catered for:
- i) **Rebate Item 691.02** – A **refund** in respect of HPL goods. 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 / Excise supervision, documentary evidence, etc.
 - ii) **Refund Item 691.05** – A **refund** provision in respect of 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.
 - iii) **Refund item 691.06** – A refund provision in respect of HPL goods used in the manufacture of other goods is not subject to the health promotion levy.

2.2 Liability for levy

- a) The liability for the HPL in the sugary beverages industry is assessed and the levy collected on a duty at source (DAS) basis.
- b) On implementation, the accounting period will commence on **1 April 2018** after which the accounting period shall be a calendar month.
- c) The DA 179 return and DA 179.01 (CSV) for the health promotion levy on sugary beverages must be completed, submitted and paid by the VM on a monthly basis. The HPL rate is fixed as contemplated in Part 7A of Schedule 1.
- d) In the case of powder and liquid concentrate or preparations for the making of beverages, the sugar content must be calculated based on the total volume of the prepared beverage when mixed or diluted according to the manufacturers product specifications.

- e) For the purposes of Rule 54F.10, in respect of the liability and the termination of liability for duty, the liability for duty of a licensee for the manufacture of sugary beverages shall cease only:
- i) Upon proof of payment of health promotion levy on such sugary beverages and entry for home consumption of such sugary beverages; or
 - ii) Upon proof that the export to any country or removal to any BLNS country of such sugary beverages has been received in such country.

2.3 Keeping of records

- a) In terms of Rule 54F.06(a)(1), every licensee must keep proper books, accounts and documents and any data created by means of a computer, of all transactions relating to the activity in respect of which the license is issued.
- b) Production documents, stock records, documents, sales invoices, dispatch / delivery notes (DN), credit notes issued by the VM for levy paid sugary beverages removed and returned (applicable to local and BLNS returns) must be kept by the licensee for five (5) years from the date of transaction on the document. Credit notes will only be allowed if each consignment is accompanied by a valid delivery note / stock return note from the purchaser.
- c) Records must show how the manufacturing process (VM only) of the **sugary beverages** has been performed from the issue of the raw material to the finished end product ready for sale for home consumption, export or removal or other disposal. The records (where applicable) should, amongst others, show the following:
- i) Accounting records of the type of sugary beverages product(s) manufactured;
 - ii) The quantity and grams of the sugary beverages product(s), subject to the levy, manufactured;
 - iii) The sales invoices or dispatch / delivery notes;
 - iv) The date that the sale / removal, disposal or other use occurred;
 - v) To whom the manufactured sugary beverages product(s) were sold or disposed of;
 - vi) The total sugar content sold or removed;
 - vii) Details of any deductions;
 - viii) Details of any off-specification or defective or returned stock;
 - ix) Declaration – Export documents to BLNS countries and countries beyond SACU; and
 - x) Completed copies of the DA 179 and applicable annexure and a printed copy of the EXD 01 Levy return.
- d) Sugary beverages subject to the levy can be lost through theft, *vis major* occurrences or any other reason. In this instance, the following records must be kept:
- i) The date the loss occurred or the date the loss was detected; and / or
 - ii) Where the loss occurred and the circumstances surrounding the incident.

2.4 Penalties

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence.
- b) Offences may render the client liable to, as provided for in the Act:
- i) Monetary penalties;
 - ii) Criminal prosecution; and / or
 - iii) Suspension / cancellation of registration / license.

2.5 Appeal against decision

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act, they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CC-24.
- b) Should clients be unhappy with a decision of any appeal committee, their recourse will be to lodge an application for Alternative Dispute Resolution (ADR) with the relevant appeal committee. The

committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

- c) Should clients wish to appeal any decision in terms of Value Added Tax (VAT) penalties, they are directed to the provisions of Section 215 to 220 of the Tax Administration Act No. 28 of 2011 for the percentage based penalty and Section 224 of the Tax Administration Act No. 28 of 2011 for the understatement penalty. In this regard, please consult the SARS website or nearest SARS Branch Office.

2.6 Assessment of the HPL on sugary beverages

- a) The DA 179 and applicable DA 179.01 (CSV - file) must be completed for which the information must be submitted via the SARS eFiling (EXD 01) [Rule 119A.R101A(10)(d)(a – g)]. The paper copies thereof must be kept for record purposes.

2.6.1 Implementation provisions

- a) Upon implementation, the licensee must, when issuing any commercial invoice or dispatch / delivery note (DN) contemplated in Rule 54F.05 in respect of sugary beverages manufactured before the date when the HPL came into operation, endorse such commercial invoice or DN to state that such sugary beverages were manufactured before the effective date.
- b) With regards to (a) above, licensees must ensure to endorse, when issuing such commercial invoice or DN in respect of sales and removal of sugary beverages products, with either a red stamp or red pen the words “**manufactured prior to 1 April 2018**”.
- c) The implementation accounting period will commence on the effective date, after which the monthly accounting periods will commence on the first day of each calendar month.

2.6.2 Declaration of quantity and levy

- a) The licensee must declare all the sales, returns, refunds and rebates that took place during the accounting month on the Excise Duty and Levy Return (EXD 01) via eFiling as per the information on the DA 179 and DA 179.01 (CSV - file).
- b) The licensee must account for all movements of products subject to the levy removed to the local market and Botswana, Lesotho, Namibia and Swaziland (BLNS) and foreign countries, as reflected on the DN's and commercial invoices. The products must be removed on a levy paid basis.

2.6.3 Commercial invoices and dispatch / delivery notes (DN)

- a) Sugar beverages classifiable under items 191.01 to 191.07 of Section A of Part 7 to Schedule 1, must be removed from the VM with a valid invoice or DN. The invoice or DN must contain the following information:
- i) The words ‘commercial invoice’ or ‘dispatch / delivery note’;
 - ii) Name, physical address and Value Added Tax (VAT) number of the manufacturer;
 - iii) Name and physical address of the purchaser;
 - iv) A serial number of the invoice;
 - v) Date of removal;
 - vi) Description of the goods (Cocoa powder, containing added sugar or other sweetening matter – Preparations for making beverages, etc.);
 - vii) The amount of levy; and
 - viii) The amount of VAT.
- b) The invoices or DN's must, in all instances, include any other particulars required for determining the rate and amount of duty on any goods specified in such invoice and removed from such warehouse [refer to Rule 54F.05(a)]. This means that the details on the invoice must reflect the HPL amount payable for each sugary beverage product specified in such invoice. A single aggregate HPL total at the bottom of the invoice would therefore not suffice, unless the invoice is only for one (1) sugary beverage product.

- c) Care should be taken of the fact that invoices and / or DN's are authentic and meet the requirements as above (i.e. the invoice and DN's must be able to be traced back to the manufacturing warehouse from where the goods were removed from).
- d) In terms of Section 7(3)(a) of the VAT Act, goods manufactured in SA which are subject to HPL, the VAT must be levied and paid on the value of the goods inclusive of the HPL.

2.6.4 Removal of sugary beverages

- a) Assessments on VM removals to the BLNS or other foreign countries – In this case the VM must complete commercial invoices and all relevant Customs export declaration documents.
- b) All commercial invoices or dispatch / delivery notes must be serially or transactionally numbered and dated as required by Rule 54F.05. Take note of the requirement regarding the “old stock” as mentioned in paragraph 2.6.1 (a) and (b) above.
- c) The licensee may only account for leviable sugary beverages on its monthly return which was removed from the VM. Sugary beverages removed or being dealt with from a place other than such a warehouse may not be accounted for on the monthly return.

2.6.5 Movement of sugary beverages

- a) Local market (levy paid):
 - i) These are removals (sales) to the local market. The levy on the movement of sugary beverages from a VM directly to the local market must be paid to SARS within the prescribed payment period.
 - ii) The levy on sugary beverages must be paid on a monthly basis after the required information was captured on the eFiling functionality.
- b) Movements to the BLNS countries (locally manufactured):
 - i) All movements of sugary beverages, subject to the levy, from South Africa (SA) to the BLNS and foreign countries will be on a levy paid basis.
 - ii) The licensee must produce the following completed documents to the Controller / Branch Manager at the port of exit from SA:
 - A) A duly completed declaration SAD 500;
 - B) Commercial invoice; and
 - C) Depending on the mode of transport, the licensee must also keep copies of documents as prescribed in the Clearance Declarations policy (SC-CF-55).
- c) Receipt of imported goods in the licensed VM:
 - i) Goods imported via a SAD 500 declaration for use (manufacture) in a licensed VM must be received in such a warehouse on a P2.53 which must be duly completed by the licensee;
 - ii) The imported product(s) must be recorded in the warehouse register which must at least contain a “receipt” and a “despatch” column;
 - iii) The “despatch” column must reflect each and every quantity of the imported product despatched for downstream production activities;
 - iv) The register must also provide for a signature and date column;
 - v) The P2.53 must be signed and dated by the licensee or his / her appointed public officer;
 - vi) Copies of the SAD 500 declaration and P2.53 must be kept for record purposes for a period of five (5) years; and
 - vii) Refer to the Excise Refunds document (SE-REF-07) for the comprehensive warehouse register and P2.53 requirements.
- d) Movement of manufactured sugary products subject to the levy for further downstream production process, i.e. syrups and concentrates to another licensed manufacturing warehouse (either within the company or legal entity or to a third party) must be removed on a levy paid basis.

- e) Movement of manufactured sugary beverages from a licenced manufacturing warehouse to a non-licensed manufacturer must be removed on a levy paid basis.
- f) Movement of imported sugary beverages to another third party licenced manufacturing warehouse for further downstream production of sugary beverages liable to the levy is allowed, but such imported sugary products removed must be duly described and noted as a deduction in the licensed manufacturing warehouse's register from which it is removed. Such removal may only be performed on a levy paid basis. Note should be taken of the refund claim requirements regarding such imported sugary products into the licensed VM.
- g) Movement of sugary beverages from a licensed manufacturing warehouse to a consignee to the BLNS and or beyond the SACU must be undertaken by the licensee only. If the licensee does not have the ability of using his / her own vehicles to remove his / her sugary beverages, he / she must use the services of a licensed remover of goods in bond (ROG) for the removal and transport.

2.6.6 Levy paid returns

- a) The VM may apply for a refund of the levy on compliance with the relevant conditions and procedures prescribed in Rebate Item 691.02 regarding sugary beverages found to be off-specification or have become contaminated or have undergone post-manufacturing deterioration may be returned to a VM for destruction or reprocessing, only if such products are found to be off-specification, contaminated or have undergone post manufacturing deterioration within a period of six (6) months after removal from the VM and that the goods are returned within this period, where the HPL amounts to not less than R100.
- b) The licensee must also refer to the notes, provisions and requirements of Rebate Item 691.02

2.6.7 Deduction

- a) Deduction (set-off) against refund items on the returns may only be made by the VM on compliance with the relevant conditions and procedures prescribed in each case.
- b) Deductions from levy quantities and levy amounts may be made in respect of:
 - i) Sugary beverages removed by such licensee for a consignee in a BLNS country; and / or
 - ii) Sugary beverages removed by such licensee to a consignee outside the Common Customs Area (CCA).

2.7 Rate of levy

- a) The rate of levy applicable for the purpose of calculating the HPL on sugary beverages is the rate reflected in Schedule 1 Part 7A.
- b) To calculate the relevant HPL, the sugar content exceeding 4g/100ml removed must be multiplied with the levy rate as per the HPL items (191.01 to 191.07).
- c) The levy is based on the grams of the sugar content that exceed 4 grams per 100ml as certified on a valid test report or in the absence of a valid test report, the deemed sugar content of the sugary beverage that is assumed to constitute 20 grams per 100ml.
- d) The "deemed sugar content" is a punitive measure, therefore the threshold of 4 grams per 100ml threshold cannot be deducted from the 'deemed sugar content' (20g/100ml) for the calculation of the HPL due.
- e) The sugar content for powder and liquid concentrates or preparations for the making of beverages must be calculated based on the total volume of the prepared beverage when mixed or diluted according to the product specifications.

3 REFERENCES

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<p>Customs and Excise Act No. 91 of 1964: Sections 20(4), 27, 54A – F, 87, 88, 119A and 120</p> <p>Customs and Excise Rules: Rules 19, 54F; 54I.01 to 54I.09 and 119A.R101A(10)(d)</p> <p>Customs and Excise Tariff: Schedule 1Part 7A and Schedule 6</p> <p>Tax Administration Act No. 28 of 2011: Sections 215 to 220 and 224</p> <p>Value-Added Tax Act No. 89 of 1991: Section 7(3)(a)</p>
Other Legislation:	None
International Instruments:	None

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
BP-02	Customs and Excise Payments – External Policy
QMS-01	Quality Management System Manual
SC-CC-24	Administrative Appeal – External Policy
SC-CC-26	Alternative Dispute Resolution – External Policy
SC-CF-55	Clearance Declaration – External Policy
SE-ACC-02-M01	Declaration and Return Submission via eFiling – External Manual
SE-ACC-05	Submission of Accounts>Returns – External Policy
SE-BON-02	Bonds – External Policy
SE-GEN-GEN-04-G01	Excise Duties and Levies – External Guide
SE-LR-02	Licensing and Registration – External Policy
SE-PAY-02	Prescribed Payment Terms/Periods – External Policy
SE-REF-07	Refunds – External Policy
SE-SB-02	Health Promotion Levy on Sugary Beverages – External Policy
SE-SB-03-M01	DA 179 and Schedule – External Manual

3.3 Quality Records

Number	Title
DA 179	Health Promotion Levy Return for Sugary Beverages
DA 179.01 (CSV - File)	Schedule of Health Promotion Levy items in respect of manufactured products removed from the licensed premises
P2.53	Receipt of imported goods into the VM for manufacturing purposes

4 DEFINITIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
B/O	Branch Office
BLNS	The Republic of Botswana, the Kingdom of Lesotho, The Republic of Namibia and the Kingdom of Swaziland
CCA	Common Customs Area
Commercial manufacturer	Means a person manufacturing sugary beverages in the manner contemplated in Rule 54I.02 – Refer to paragraph 2.2.1
CSV	Comma-Separated Values
DN	Dispatch/Delivery Note
Electronic format	CD, Stick etc.
g	Gram
HPL	Health Promotion Levy (Chapter VB of the Act)
Intrinsic	Means sugars that are naturally occurring and which form an integral part of certain unprocessed foodstuffs, the most important being whole fruits and vegetables, that are enclosed in the cell, (mainly fructose, glucose and sucrose) and which are always accompanied by other nutrients

kg	Kilogram
Licensee	Any person licensed under any provision of the Act
Manufacture	The production of sugary beverages
ml	Millilitre
Non-commercial manufacturer	Means a person manufacturing sugary beverages not in the manner contemplated in rule 54I.02
ROG	Remover of goods in bond
SBL	Sugary Beverages Levy
Schedule 1 Part 7A (SCH1P7A)	Levy on sugary beverages
Schedule 6	Rebates and refunds of excise duties, fuel levy, road accident fund levy, environmental levy and health promotion levy
SM	Service Manager
Sugar	Means both the intrinsic and added sugars and other sweetening matter contained in any sugary beverage
Sugar content	Means the sugar content of any sugary beverage that is determined in the manner contemplated in rule 54I.06
Sugary Beverages Levy	The sugary beverages levy imposed in terms of items 191.01 to 191.07 in Section A of part 7 of Schedule 1 and the notes thereto
VAT	Value Added Tax
VM	Manufacturing Warehouse

5 DOCUMENT MANAGEMENT

Policy Owner	Executive: Governance
Detail of change from previous revision	Initial release
Template number and revision	GC-TM-03 - Rev 9