

SOUTH AFRICAN REVENUE SERVICE

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

Under sections 60, 64E 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 23 July 2021**.

**EDWARD CHRISTIAN KIESWETTER
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

SCHEDULE

Replacement of rules under section 64E of Act 91 of 1964

1. The rules made under section 64E of the Customs and Excise Act are hereby repealed in their entirety and replaced by the following rules:

“RULES FOR SECTION 64E

ACCREDITATION OF CLIENTS

Part 1: General

Definitions

64E.01 In these rules, unless the context otherwise indicates –

“Accreditation Agreement” means an agreement in accordance with the contents of the pro forma agreement prescribed in terms of rule 64E.18;

“Accreditation Committee” means a committee established in terms of rule 64E.03;

“Accreditation Competency Assessment Certificate” means a certificate referred to in rule 64E.06(3);

“applicant” means a person that has submitted an application, but excludes a person submitting an application on behalf of another person;

“application” means an application for accreditation in terms of rule 64E.05 and includes any application for renewal;

“Client Relationship Manager” means an officer or other person to whom the facilitation of the relationship between the Commissioner and the holder of accredited client status has been delegated as contemplated in rule 64E.02(c);

“competency assessment” means a competency assessment referred to in rule 64E.06;

“customs activity” means an activity regulated by the Act and involving the import or export of goods, the handling, transit, conveyance, storage and processing of imported goods, or goods to be exported, which are subject to customs control;

“located in the Republic” in relation to –

- (a) a natural person, means that such person is ordinarily resident in the Republic at a specific physical address in the Republic; and
- (b) a juristic person, means that such person –
 - (i) is incorporated, registered or recognised in terms of the laws of the Republic or of another country; and
 - (ii) has a place of business at a specific physical address in the Republic;

“person” includes a juristic entity; and

“these rules” means the rules under section 64E.

Delegation

64E.02 (1) The powers and functions mentioned below are for purposes of section 64E(2)(d) delegated as follows:

- (a) The conducting of investigations contemplated in section 64E(2)(a) read with rule 64E.07, to the officer responsible for performing post clearance audit or validation checks;
- (b) the consideration and approval or refusal of applications, and the cancellation or suspension of accredited client status as contemplated in section 64E(3)(a) and (b), to the Accreditation Committee established in terms of rule 64E.03;
- (c) the facilitation of the relationship between the Commissioner and the holder of accredited client status, to a Client Relationship Manager; and
- (d) any function or power for purposes of the administration of section 64E other than a power or function referred to in paragraph (a) to (c), and excluding the power to prescribe rules, to an officer.

(2) Additional detail in relation to any delegation referred to in subrule (1) must be set out in writing.

Establishment of Accreditation Committee

64E.03 (1) An Accreditation Committee is hereby established for purposes of the delegated authority contemplated in rule 64E.02(1)(b).

- (2) The Accreditation Committee referred to in subrule (1) must consist of –
- (a) a chairperson appointed by the Commissioner; and
 - (b) members with the necessary knowledge and skills to consider and decide matters falling within the authority of the committee, nominated by the Chairperson.

(3) The chairperson must designate one of the members referred to in subrule (2)(b) as deputy chairperson to perform the functions of chairperson in the absence of the chairperson.

Part 2: Levels of accredited client status, application process, validity period and renewal of accredited client status

Levels of accredited client status and persons who may apply for accreditation

64E.04 (1) For the purposes of section 64E(1)(a)(ii) the levels of accredited client status are –

- (a) Level 1, indicating that the accredited client status conferred on the registrant or licensee is that of “Authorised Economic Operator (Compliance)”, in respect of which the benefits referred to in rule 64E.14 apply to the extent set out in that rule; and
- (b) Level 2, indicating that the accredited client status conferred on the registrant or licensee is that of “Authorised Economic Operator (Security)”, in respect of which the benefits referred to in rule 64E.15 apply to the extent set out in that rule.

(2) (a) A person registered or licenced for any customs activity under the provisions of the Act that is located in the Republic may, subject to paragraph (b) and (c), apply for Level 1 or 2 accredited client status in terms of rule 64E.05.

(b) All customs activities for which an applicant is registered or licenced under the provisions of the Act will be taken into account for purposes of the application for accredited client status.

(c) A registered agent acting for a registrant or licensee that is not located in the Republic may not in that capacity apply for, or get awarded, accredited client status.

Applications for accredited client status

64E.05 (1) Application for accredited client status must be made on form DA 186 as published on the SARS website, submitted –

- (a) at any Customs and Excise Office where a Client Relationship Manager is located, as indicated on the SARS website; or
- (b) by e-mail directed to the e-mail address indicated on the SARS website for receipt of such applications.

- (2) An application referred to in subrule (1) must be supported by –
- (a) the following documents, available on the SARS website and completed in accordance with any instructions provided on the website in this regard:
 - (i) A Customs Accreditation Self-Evaluation Questionnaire;
 - (ii) a Systems Questionnaire; and
 - (iii) an Accreditation Agreement;
 - (b) an application to make a booking for the competency assessment referred to in rule 64E.06; and
 - (c) any other supporting documents that may be necessary for proving compliance with the criteria prescribed in rule 64E.12 or 64E.13 for the relevant level of accredited client status, as may be required by the Commissioner or as indicated on the application form.

Competency assessment to be passed to establish sufficient knowledge

64E.06 (1) An applicant must in accordance with this rule establish sufficient knowledge of customs laws and procedures as contemplated in section 64E(1)(b)(iv).

(2) (a) An applicant must, subject to paragraph (b), apply for a competency assessment on a booking form published on the SARS website for this purpose, submitted together with the application for accredited client status, as is contemplated in rule 64E.05(2)(b).

(b) Application to take the competency assessment may be made in respect of –

- (i) the applicant personally; or
- (ii) a person or a number of persons in the employ of the applicant and nominated by the applicant as persons who will administer accredited client requirements as contemplated in section 64E(1)(b)(iv).

- (3) An Accreditation Competency Assessment Certificate –
- (a) is issued in the name of the person who took the assessment if a score of at least 70 per cent is achieved; and
 - (b) remains valid for five years from date of issue, subject to subrule (4).

(4) (a) The holder of an Accreditation Competency Assessment Certificate may in the event of significant changes in customs and excise legislation, during the validity period of that certificate be required to take an additional assessment to demonstrate sufficient knowledge of such changes.

(b) In circumstances contemplated in paragraph (a) the holder is entitled to be given reasonable notice of the need for an assessment.

(5) A holder of accredited client status may from time to time in order to maintain sufficient knowledge of customs laws and procedures make application for the competency test by submitting the booking form –

(a) at any Customs and Excise Office where a Client Relationship Manager is located, as indicated on the SARS website; or

(b) by e-mail directed to the e-mail address indicated on the SARS website for receipt of such applications.

Investigations to verify statements in applications

64E.07 (a) For the purposes of an investigation contemplated in section 64E(2)(a), the applicant must make available any books, accounts and other documents and furnish fully the information as may be required by the Commissioner.

(b) An investigation referred to in paragraph (a) may include books, accounts or other documents or information for a period of up to five years prior to the date of application for accredited client status, depending on the level of accredited client status applied for.

Approval of applications subject to conditions

64E.08 (1) An application may be approved subject to –

(a) the general conditions referred to in subrule (2) as well as any other general conditions included in the Accreditation Agreement; and

(b) any specific conditions that may be determined by the Commissioner in respect of the specific accredited client status issued.

(2) Approval of applications for accredited client status is subject to the following general conditions:

- (a) The holder of the accredited client status must remain compliant with the criteria prescribed for the particular level of accredited client status as referred to in rule 64E.12 or 64E.13 respectively;
- (b) if the holder of the accredited client status is no longer compliant with any of the criteria contemplated in paragraph (a) or if any of the information provided by the holder on the application form has subsequently changed, such holder must promptly notify the Commissioner of the non-compliance or change by submitting in terms of rule 64E.05 application form DA 186 and the required supporting documents reflecting the relevant details in respect of the non-compliance or change; and
- (c) the holder of the accredited client status may not without the prior permission of the Commissioner make any change in respect of his or her computer system referred to in rule 64E.12(1)(b) involving –
 - (i) utilising a different computer system;
 - (ii) changing from using his or her own computer system to using that of a third party;
 - (iii) changing from using a third party computer system to using his or her own computer system; or
 - (iv) contracting the services of an intermediary or a duly authorised agent to conduct customs and excise related business with the Commissioner within the provisions of this Act.

Validity of accredited client status

64E.09 (1) Accredited client status –

- (a) takes effect on the date specified in the status; and
- (b) remains valid for a period of five years.

(2) An accredited client status lapses before its expiry in terms of subrule (1)(b) if –

- (a) the status is cancelled by the Commissioner as contemplated in section 64E(3);
- (b) the status holder's registration or licence is suspended or cancelled in accordance with section 60(2); or
- (c) the status holder no longer intends to retain the status, and notifies the Commissioner of such intention.

Accredited client status to extend to subsequent customs registrations or licences granted

64E.10 Accredited client status extends to any registration or licence in respect of a customs activity subsequently granted to the holder in terms of section 59A or 60, provided that the holder complies in respect of any such registration or licence to the applicable criteria for the relevant Level of accredited client status.

Renewal of accredited client status

64E.11 (1) The holder of an accredited client status may not later than 30 calendar days before expiry of the status in terms of rule 64E.09(1)(b) apply for renewal of the status.

(2) All the provisions applicable to an application in these rules apply with the necessary changes for purposes of an application for renewal of accredited client status.

(3) If consideration of an application for renewal of accredited client status is not finalised before the expiry of the status, the Commissioner may extend the validity period of the status until the renewal application is finalised.

Part 3: Criteria for levels of accredited client status

Criteria for Level 1 accredited client status (AEO Compliance)

64E.12 (1) An applicant for Level 1 accredited client status must for purposes of –

(a) section 64E(1)(b)(i) and (vi), subject to subrule (2), have a record of compliance with this Act for 3 years preceding the date of application, as evidenced by an absence of –

(i) a contravention of sections 80 to 84 and 86 of this Act that resulted in the imposition of any administrative penalty, excluding administrative penalties for—

(aa) unintentional errors or omissions on documents submitted to the customs authority; or

(bb) any other non-compliance which is a minor or mere technical

- breach committed without the intention to mislead; or
- (ii) any suspension or cancellation of a registration or a licence, or a deferment benefit granted to the applicant in terms of this Act;
- (b) section 64E(1)(b)(ii) and (iii), have and maintain –
- (i) a computer system conforming to any conditions specified in the user agreement referred to in section 101A;
 - (ii) an effective internal accounting, record keeping and operational system which is consistent with generally accepted accounting principles, and which must—
 - (aa) reflect a full audit trail of all the applicant’s customs transactions and activities; and
 - (bb) have verifiable procedures for backup, recovery, fallback, archiving and retrieval of business records; and
 - (iii) internal controls for detecting illegal or irregular transactions and activities;
- (c) section 64E(1)(b)(iv), have sufficient knowledge of customs and excise laws and procedures to implement and maintain an effective accredited client status compliance system, as evidenced by an Accreditation Competency Assessment Certificate issued in terms of rule 64E.06;
- (d) section 64E(1)(b)(v), have sufficient financial resources, as evidenced by –
- (i) audited financial statements of the business for the past three financial years or such lesser period as the Commissioner may allow in a specific case; or
 - (ii) where no such statements are available, other evidence of the financial viability of the business which may include proof of available financial resources as the Commissioner may allow; and
- (e) section 64E(1)(b)(vi), have no –
- (i) outstanding –
 - (aa) taxes, interest, penalties or other amounts due and payable to SARS for which he or she is liable in terms of this Act or any other tax law; or
 - (bb) tax returns or other documents that must be submitted for tax purposes to SARS in terms of this Act or any other tax law; or
 - (ii) conviction for any offence in terms of this Act or any other tax law.

(2) The Commissioner may, despite subrule (1)(a), assess an applicant's record of compliance with customs requirements on the basis of any records and information available to the Commissioner at the time of application, if a three year compliance record referred to in subrule (1)(a) is not available due to the applicant's limited exposure to the South African customs and excise environment.

Criteria for Level 2 accredited client status (AEO Security)

64E.13 (1) The criteria referred to in paragraphs (a) to (e) of rule 64E.12 apply for purposes of an applicant for Level 2 accredited client status: Provided that the record of compliance contemplated in rule 64E.12(1)(a) is five years in respect of applicants for Level 2 accredited client status.

(2) An applicant for Level 2 accredited client status must, in addition to compliance with the criteria contemplated in subrule (1), for purposes of section 64E(1)(b)(vi), meet the following safety and security standards:

- (a) The applicant must implement adequate and appropriate security measures to secure premises, buildings and facilities, including prohibiting unauthorised access by any person, vehicle or goods to security sensitive areas within such premises, buildings and facilities which present a higher security risk if breached, by implementing a system of access control or other appropriate security precautions;
- (b) security measures must be in place in respect of personnel and other persons gaining access to the applicant's premises providing for –
 - (i) the unique identification of an individual as a member of the applicant's personnel to mitigate the risk of unauthorised persons gaining access to secure areas;
 - (ii) security screening in respect of prospective employees applying for posts which entail working in security sensitive areas;
 - (iii) periodic security screening of current employees working in security sensitive areas; and
 - (iv) the identification, recording and dealing with unauthorised or unidentified persons, such as photo identification and sign-in registers for visitors at all entry points to the premises;

- (c) the applicant must identify his or her business partners participating in any aspect of the supply chain of goods involved in the relevant customs activity and must be able to demonstrate that efforts were made to ensure that business partners meet or enhance supply chain security requirements through –
 - (i) the review of relevant commercial information relating to prospective contracting parties before entering into contractual arrangements; and
 - (ii) the implementation of appropriate contractual arrangements or other measures appropriate for the applicant's business model;
- (d) measures must be in place to ensure that the security and integrity of cargo and any conveyance is maintained whilst under the applicant's supervision or control, including procedures for –
 - (i) storing of, access to and removal of, cargo and conveyances in secure areas;
 - (ii) proper sealing by designated personnel;
 - (iii) training of operators of conveyances used for the transportation of cargo to ensure the security of conveyances and the cargo at all times;
 - (iv) inspection of conveyances and recognizing and reporting compromised seals, cargo and conveyances, as well as keeping record of inspections; and
 - (v) ensuring that cargo is secure during transport and whilst loading or unloading from a conveyance;
- (e) the applicant must have a contingency plan for crisis management and recovery procedures to mitigate any risk of loss or destruction of the applicant's records and information;
- (f) regularly reviewed measures must be in place for the education and training of personnel with regard to the risks associated with the international supply chain, the recognition of suspicious incidents and potential threats and actions to be taken in response to it;
- (g) adequate information technology security measures must be employed to protect the applicant's information technology systems, evidenced by –
 - (i) a dedicated person responsible for managing information technology and information technology security;
 - (ii) written information technology security procedures or confirmation of the implementation of information security measures;

- (iii) employee training in respect of information technology security policies, procedures and standards;
- (iv) monitoring systems to identify improper access to information technology, tampering with or the altering of business data, as well as procedures to deal with any breaches of security by personnel or other persons;
- (v) measures providing for –
 - (aa) accessing of information technology systems by personnel through individually assigned accounts;
 - (bb) limiting access to master data and the creation of user profiles providing access to information connected to the specific tasks of the user; and
 - (cc) periodic change of passwords;
- (vi) security features incorporated into information security systems, such as firewalls, spyware, encryption, monitoring of software; and
- (vii) the physical securing of the applicant's information technology server room, including authorised access control;
- (h) the applicant must at all times have dedicated personnel with an understanding of its business and access to the relevant information tasked with consultation, co-operation and communication with SARS in relation to customs matters; and
- (i) the applicant must practice good corporate governance and be able to show compliance with the guidelines contained in the latest revision of the King Report on Corporate Governance, to the extent applicable to the applicant.

Part 4: Benefits for levels of accredited client status

Benefits for Level 1 accredited client status (AEO Compliance)

64E.14 The holder of Level 1 accredited client status is entitled to –

- (a) any one or more of the following benefits as may be determined by the Commissioner generally, for a particular category of clients, or in a particular case:
 - (i) The services of a Client Relationship Manager;
 - (ii) reduction of the amount of any security required in terms of the Act;
 - (iii) fewer documentary and physical inspections for compliance risks;

- (iv) prioritising of requests for tariff and valuation determinations;
 - (v) prioritising of access to non-intrusive inspection techniques when goods are stopped or detained for inspection;
 - (vi) prioritising and expediting of inspections;
 - (vii) the inspection of goods at the client's premises on appointment, irrespective of the type of goods, and the exemption from payment of a fee for such inspections; and
 - (viii) authorisation to make use, in accordance with an agreement entered into with SARS, of a unique SARS logo identifying the holder recognised by SARS as a person with Authorised Economic Operator status; and
- (b) recognition by other customs authorities of the Level 1 accredited client status issued to the holder –
- (i) to the extent provided for in mutual recognition arrangements between SARS and such customs authorities, published on the SARS website; and
 - (ii) provided that consent has been given by the holder on application form DA 186 for the sharing of such information as may be necessary to assure effective and continued mutual recognition; and
- (c) co-ordination of interventions undertaken or required to mitigate compliance risks in respect of such holder's goods by officers and officials from other government agencies –
- (aa) to the extent provided for in memoranda of understanding between SARS and such agencies; and
 - (bb) provided that consent has been given by the holder on application form DA 186 for the sharing of such information as may be necessary for the facilitation of the co-ordinated intervention.

Benefits for Level 2 accredited client status (AEO Security)

64E.15 The holder of Level 2 accredited client status is entitled –

- (a) in addition to the benefits referred to in rule 64E.14(a), to any one or more of the following further benefits as may be determined by the Commissioner generally, for a particular category of clients, or in a particular case:

- (i) Exemption, on conditions determined by the Commissioner, from customs supervision following application by such holder for special or extra attendance in relation to:
 - (aa) The examination of goods entered on a sight bill of entry;
 - (bb) the unpacking and repacking of goods for export;
 - (cc) the export of goods temporarily imported;
 - (dd) the examination of goods without prejudice; and
 - (ee) the destruction of goods;
- (ii) prioritising of applications for special or extra attendance services where such holder is not exempted from supervision as contemplated in subparagraph (i);
- (iii) no charges being imposed for special or extra attendance in respect of applications referred to in paragraph (ii) if the attendance is provided during hours of attendance contemplated in rule 120.01;
- (iv) expedited processing of refund and drawback applications;
- (v) provision of targeted training sessions;
- (vi) provision of trade statistics on a quarterly basis;
- (vii) extension of validity of the relevant license issued to such holder in terms of section 60;
- (viii) reduced cyclical compliance audits for licensees, which will not affect risk based audits or mandatory audits for purposes of maintaining the accredited client status;
- (ix) fewer documentary and physical inspections for compliance and supply chain security risks;
- (x) exemption from security payments; and
- (xi) co-ordination of interventions undertaken or required to mitigate compliance and security risks in respect of such holder's goods by officers and officials from other government agencies –
 - (aa) to the extent provided for in memoranda of understanding between SARS and such agencies; and
 - (bb) provided that consent has been given by the holder on application form DA 186 for the sharing of such information as may be necessary for the facilitation of the co-ordinated intervention; and

- (b) recognition by other customs authorities of the Level 2 accredited client status issued to the holder –
- (i) to the extent provided for in mutual recognition arrangements between SARS and such customs authorities, published on the SARS website; and
 - (ii) provided that consent has been given by the holder on application form DA 186 for the sharing of such information as may be necessary to assure effective and continued mutual recognition.

Notification of benefits

64E.16 (1) After approval of an application, a holder of accredited client status is entitled to be notified of those benefits awarded to that holder in terms of this Part.

(2) A notification referred to in subrule (1) must form part of a notification by SARS of the approval of the application.

Part 5: Miscellaneous matters

Information sharing for purposes of mutual recognition

64E.17 Whenever any international agreement or arrangement provides for the mutual recognition of accreditation status conferred by each of the parties in terms of their respective legislation on qualifying traders active within the customs environment of the relevant party, any holder of accredited client status that wishes to benefit from such recognition must consent to the sharing of such information as may be necessary to ensure the effective and continued administration of the mutual recognition by the party with whom the information is shared.

Accreditation Agreement

64E.18 An Accreditation Agreement referred to in rule 64E.05(2)(a)(iii) must conform to the content of a pro forma agreement published on the SARS website.

Part 6: Transitional matters

Transitional provisions relating to accredited client status granted before effective date of these rules

64E.19 (1) For purposes of this rule –

“effective date” means the date on which these rules come into effect;

“repealed rules” means the rules under section 64E as it existed immediately before the effective date; and

“replacing rules” means the rules under section 64E after the effective date.

(2) (a) Any Level 1 accredited client status granted before the effective date lapses on the effective date.

(b) Despite paragraph (a), the following provisions continue in respect of persons that had Level 1 accredited client status immediately before the effective date:

- (i) Section 21(3)(c); and
- (ii) rule 49.04(a) read with (c)(ii) in so far as it provides for the exemption from submitting proof of origin and any supporting documents in terms of that rule.

(3) Any Level 2 accredited client status granted before the effective date must from the effective date be regarded to be a Level 1 accredited client status as contemplated in rule 64E.04(1)(a).

(4) (a) Any application for Level 2 accredited client status as contemplated in the repealed rules, submitted before the effective date, must be dealt with in terms of this subrule.

(b) An application referred to in paragraph (a) in respect of which consideration has not commenced yet, must be dealt with in accordance with the replacing rules. The applicant may supplement such application as may be necessary to comply with any new requirement contained in the replacing rules.

(c) An application referred to in paragraph (a) in respect of which consideration has already commenced on the effective date must be finalised in accordance with the repealed rules. Accredited client status granted pursuant to such

an application must be regarded to be a Level 1 accredited client status as contemplated in rule 64E.04(1)(a).

(5) Any competency certificate issued before the effective date remains valid for purposes of these rules until its expiry date.”.

Amendment of rule 60.11

2. Rule 60.11 is hereby amended by the addition of the following paragraph after paragraph (c):

“(d) The validity period of a licence is extended until a date determined by the Commissioner in circumstances where a benefit contemplated in rule 64E.15(a)(vii) is awarded to a licensee who is the holder of a Level 2 accredited client status.”.

Insertion of form

3. Item 202.00 of the Schedule to the rules is hereby amended by the insertion of the following form:

“DA 55 Customs and Excise Valuation Questionnaire”.

Substitution of forms

4. Item 202.00 of the Schedule to the rules is hereby amended by the substitution of the following form:

“DA 186 Application for accredited client status under section 64E of the Customs and Excise Act, 1964”.