

EXPLANATORY MEMORANDUM

AMENDMENT 2012

The draft amendments to the Schedules to the Customs and Excise Act, 1964 (the Act), are scheduled for implementation **with effect from 1 January 2012**.

The Schedules to the Act have a new but certainly improved look as a result of Customs Modernisation and the implementation of the Tariff Management System (TMS). One column is also being removed, namely the “Heading” column in Part 1 of Schedule No.1. The subheading column is renamed to “heading/subheading”.

The draft amendment includes the following:

1. The implementation of HS 2012

The World Customs Organisation (WCO), of which South Africa is a member, has published the amendments to the Nomenclature appended to the International Convention on the Harmonised System Commodity Description and Coding System (HS Convention), which were accepted as a result of the Customs Co-operation Council’s recommendations of 26 June 2009. These amendments will enter into force on 1 January 2012.

The Preamble to the HS Convention emphasizes the importance of ensuring that the HS is kept up to date in light of changes in technology or in patterns of international trade. Article 7 of the HS Convention further states that it is for the HS Committee to propose such amendments to the HS Convention as may be considered desirable, having regard to, in particular, the needs of users.

This is the fourth major revision of the HS since it was approved by the Council in 1983 and implemented in 1988.

The amendment of Part 1 of Schedule No. 1 includes approximately -

- Deletions: 322
- Substitutions: 1 495
- Insertions: 642

It should be noted that where a 6-digit subheading is amended to an active subheading with rates of duty or amended from an active subheading with rates to a heading with no rates of duty, the 6-digit subheading will be included in the substitutions.

The amendment of the HS Nomenclature includes 220 sets of amendments, including, *inter alia*, the following:

- Environmental and social issues of global concern, in particular the classification and coding of goods of specific importance to food security and the early warning data system of the United Nations' Food and Agriculture Organisation (FAO)
- New subheadings have been created for separate identification of certain edible vegetables, roots and tubers, fruit and nuts, as well as cereals
- New subheadings have also been created for specific chemicals controlled under the Rotterdam Convention and ozone-depleting substances controlled under the Montreal Protocol
- Amendments that resulted from changes in international trade patterns, such as the deletion of more than 40 subheadings due to the low volume in trade, separate identification of certain commodities in either existing or new headings, some advancements in technology and amendments aimed at the clarification of text to ensure uniform application of the HS Nomenclature

In terms of Article 3 to the HS Convention, Contracting Parties will in practice be obliged to modify their Customs tariff and statistical nomenclature to incorporate the HS headings and subheadings.

SARS has given effect to the WCO recommendations by incorporating the proposed changes in Part 1 of Schedule No. 1 to the Act. The 8-digit national level is amended to maintain the current duty structure and duty rate phase downs in terms of South Africa's obligations with regard to trade agreements.

2. The phase-down of duties in terms of trade agreements and requests from the Commission

2.1 The phase-down of duties in terms of the free trade agreement with the EU

In terms of the EU Agreement, which entered into force on 1 January 2000, South Africa has an obligation to amend the rates of duties on certain products listed in Part 1 of Schedule No. 1 to the Act, annually on 1 January.

The phase-down of duties in terms of the EU agreement relates to Annex III List 3, List 4 and List 5 for industrial products, including the phase-down in terms of the Addendum to the EU Agreement applicable to the motor vehicle industry, and Annex VI List 3 for agricultural products.

The duties on goods listed in Annex III List 3 and List 4, as well Annex VI List 3, are being phased down to zero and the duty free quota on wine is being removed as a consequence.

2.2 The phase-down of duties in terms of the free trade agreement with EFTA

In terms of the EFTA Agreement, which entered into force on 1 May 2008, South Africa has an obligation to amend the rates of duties on certain products listed in Part 1 of Schedule No. 1 to the Act, annually on 1 January.

The phase-down of duties in terms of the EFTA agreement relates to the following:

- Fish and other marine products in Annex IV, table 3 categorised as List 4;
- industrial products in Annex VII, table I categorised as List 3, List 4 and List 5;
- agricultural products in Annex VII, table 2 categorised as List 4 and List 5; and
- agricultural products in Annex I of the Agricultural agreement between the SACU States and Switzerland, table I categorised as List 3.

2.3 The reduction of duties in terms of MIDP

The reduction of duties in terms of the recommendations made by the Commission in M4/2009 dated 28 October 2009 pertaining to MIDP includes the following:

- the general rates of duties on light motor vehicles are reduced to 25%; and
- the rates of duties on original equipment components of Chapter 98 are reduced to 20%.

2.4 Reduction in the rates of duties on paper and paperboard of Chapter 48

The general rates of duties on paper and paperboard of Chapter 48 in terms of the recommendations made by the Commission in Report No. 151 dated 8 February 2006.

The reductions of the general rates of duties for 2012 are as follows:

- (i) 4816.90.10, 4802.54.90, 4802.55.90, 4802.56.90, 4802.57.90, 4802.58.90, 4802.61.90, 4802.62.90, 4802.69.90, 4810.13.20, 4810.14.10, 4810.19.10, 4810.22.10, 4810.29.10, 4810.31.10, 4810.32.10, 4810.39.10, 4810.92.10, 4810.99.10, 4811.10.10, 4811.41.10, 4811.49.10, 4811.51.10, 4811.59.10, 4811.60.10 and 4811.90.10 are reduced to free
- (ii) 4811.41.90 is reduced to 6%.

2.5 Reduction in the rates of duties on aluminium products classifiable under tariff headings 76.06 and 76.07

The general rates of duties on aluminium products classifiable in tariff headings 76.06 and 76.07 are reduced in terms of the recommendations made by the Commission in Report No. 270 dated 5 August 2008.

The general rates of duty for 2012 are reduced to free for the following subheadings in 76.06 and 76.07:

7606.11.07, 7606.11.17, 7606.12.07, 7606.12.17, 7606.91.07, 7606.91.17, 7606.92.07, 7606.92.17, 7607.11, 7607.19.90 and 7607.20.90.

2.6 Reduction in the general rate of duty on organic surface-active agents and primary plastic polymers

The general rates of duties on certain organic surface-active agents and primary plastic polymers are reduced in terms of recommendations made by the Commission in Report No. 282 dated 20 May 2009.

The general rates of duties for 2012 are reduced to free for the following subheading:

3402.11.10, 3402.13, 3901.10, 3901.20, 3902.10.90, 3902.30, 3904.10, and 3905.21.

3. Technical amendments to the Schedules of the Act

3.1 Additional tariff subheadings in Part 1 of Schedule No. 1

3.1.1 Request from the International Trade Administration Commission (ITAC) for separate subheadings for the identification and monitoring of certain green goods.

Green goods are government's commitment to the New Growth Path as a result of climate conditions. ITAC conducted a preliminary analysis of the tariff regime for green goods to identify environmental goods, production possibilities, trade monitoring and possible tariff relief or support.

The monitoring of the impact of green goods technologies would necessitate accurate statistical data and for this reason the ITAC requested SARS to create additional 8-digit subheadings for certain green goods.

The following new 8-digit subheadings are inserted:

7019.90.20	For blades used with wind turbines
7604.10.30	For blades used with wind turbines
8412.80.10	Generators for wind turbines
8412.80.90	Other
8503.00.40	Thermocouples for the generation of electric energy from heat energy
8506.80.40	Fuel cells
8541.40.10	Photo-voltaic cells whether or not assembled in modules or made up into panels
8541.40.20	Light emitting diodes
8541.40.90	Other
8703.90.29	Electric vehicles
8704.90.40	Electric vehicles, of a mass not exceeding 2 000 kg or a G.V.M. not exceeding 3 500 kg, or of a mass not exceeding 1 600 kg or a G.V.M not exceeding 3 500 kg per chassis fitted with a cab

3.1.2 Request from the Association of Meat Importers and Exporters (AMIE) for a separate subheading to identify chicken carcasses

AMIE motivated that, statistically, the current structure of subheading 0207.12 creates the impression that high volumes of whole chicken are imported at very low prices when in fact the volumes relate to whole birds as well as stripped carcasses.

This creates the incorrect impression that whole birds are dumped on the SACU market when in fact high volumes of stripped carcasses used in downstream products such as pet food, processed meats, etc. are imported. To rectify this anomaly and insure more accurate trade data to assist with anti-dumping investigations on whole chicken, AMIE requested the creation of an additional 8-digit subheading for carcasses.

The following new 8-digit tariff subheading is inserted:

0207.12.20	Carcasses (excluding necks and offal) with all cuts (e.g. thighs, wings, legs and breasts) removed
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3.1.3 Request from Ultrafab Pty Ltd for an additional 8-digit subheading for pin locks incorporating a padlock locking mechanism

F.C Dubbelman & Associates CC on behalf of Ultrafab Pty Ltd applied for the creation of an additional 8-digit subheading for pin locks incorporating a padlock locking mechanism.

Ultrafab motivated that the scope of tariff subheading 8301.40 is wide and covers numerous other types of locks. It is, therefore, impossible to determine from where, in what quantities and at what prices these particular pin locks are imported. The effect is that it is very difficult to substantiate a dumping investigation for pin locks.

The 8-digit subheading will enable the SACU industry to monitor the origin of the competitive products imported.

The following new 8-digit tariff subheading is inserted:

8301.40.10	Pin locks incorporating a padlock locking mechanism
8301.40.90	Other

3.1.4 Request from the Southern African Clothing and Textile Workers' Union for additional 8-digit subheadings to distinguish between trousers and shorts

The Southern African Clothing and Textile Workers' Union (SACTWU) submitted a request for additional 8-digit subheadings in tariff subheading 6103.4, 6104.6, 6203.4 and 6204.6 to distinguish between trousers and shorts.

SACTWU is of the view that the 8-digit subheadings will not only assist with the monitoring of imported goods but it will also assist SARS in detecting irregular activities such as under-invoicing.

The following new 8-digit descriptions are inserted in tariff subheading 6103.41, 6103.42, 6103.43, 6103.49, 6104.61, 6104.62, 6104.63, 6104.69, 6203.41, 6203.42, 6203.43, 6203.49, 6204.61, 6204.62, 6204.63 and 6204.69:

Trousers
Breeches and shorts
Other

3.1.5 Request from the South African Reserve Bank for an additional 8- digit subheading for catalytic converters

The South African Reserve Bank submitted a request for the creation of an additional 8-digit subheading for catalytic converters of a kind used for emission control in motor vehicles. The catalytic converters are classifiable in tariff subheading 8421.39 amongst a wide range of filtering or purifying machinery and apparatus for gases with different unit values.

The Reserve Bank motivated that the catalytic converter industry is a very important industry in South Africa and trade data for this industry is of particular importance. The current tariff structure makes it difficult to make a sound analysis of trends and volumes on imports and exports of catalytic converters and an additional subheading would assist in providing accurate industry related information.

The following new 8-digit subheading is inserted:

8421.39.30	Catalytic converters of a kind used for motor vehicles
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3.1.6 Provision in Chapter 99 to provide for personal and household effects imported in terms of Schedule No. 4 with retrospective effect from 1 January 2010.

Subheadings 9999.00.10 and 9999.00.20 have been used on SARS clearing system for many years to accommodate the simplified declaration of personal and household goods imported by immigrants under rebate of duty in terms of Schedule No. 4. It was recently established that these subheadings have no legal status as they do not form part of the Schedules to the Act.

SARS would like to insert these subheadings in the legal structure of Part 1 of Schedule No. 1 and to accommodate the two year period provided in terms of the Act for any refunds or underpayments it is suggested that these provisions be implemented with retrospective effect from 1 January 2010.

The following new 8-digit tariff subheadings are inserted:

9999.00.10	Personal effects, new or used, entered in terms of rebate item 407.01 of Schedule No. 4
9999.00.20	Household furniture and other household effects, new or used, entered in terms of rebate item 407.06 of Schedule No. 4

3.2 Amendments in Part 2A of Schedule No. 1

With the implementation of HS 2012 biodiesel is moved to new heading 38.26, heading 24.06 is restructured to make provision for water pipe tobacco and fuel preparations of subheading 2710.11 is moved to new subheading 2710.12.

The items relating to above-mentioned products in Part 2A of Schedule No. 1 are amended accordingly.

3.3 Amendment of Part 2B of Schedule No. 1

With the implementation of HS 2012, subheading 9504.50 is inserted to provide separately for all video game consoles and machines. Those that are used with television receivers are subject to ad valorem duties in terms of Part 2B of Schedule No. 1 and the structure is amended accordingly.

The new provisions that are created for electric vehicles as a result of the request received from ITAC are also inserted in Part 2B of Schedule No. 1 as electric vehicles are currently subject to ad valorem duties.

3.4. Amendment of Part 3A of Schedule No. 1

This is an editorial amendment to change the language of the rates of duty in the Afrikaans version of this Part. The rates were reflected in English in the Afrikaans version.

3.5 Amendment of Part 5A and Part 5B of Schedule No. 1

As a consequence to the restructuring of Part 1 of Schedule No. 1 due to the implementation of the HS 2012, the new subheadings for light fuel preparations and biodiesel are amended in the items of Part 5A and Part 5B of Schedule No. 1.

3.6 Amendment of Schedule No. 2

The wording in Note 2 of Schedule No. 2 is substituted to replace “Column III” with “the column headed Rebate Items”.

Item 215.11 is amended due to structural changes in Part 1 of Schedule No. 1 in HS 2012.

3.7 Amendment of Schedule No. 3

- The following rebate item in Schedule No. 3 is substituted, with retrospective effect from 1 January 2002. This is a consequential amendment to the change of subheading 4104.3 that was omitted from the HS 2002 implementation:

308.01/3921.13/01.06

- The following rebate items in Schedule No. 3 have become redundant due to the subheadings listed in the items becoming free of duty in terms of the recommendations made by ITAC on aluminium and paper:

309.01/4811.59
310.05/48.10
310.05/4810.39
310.05/4811.10
310.05/4811.51
310.05/4811.59
310.05/4811.90
310.09/4811.5
311.12/4811.5
315.03/7606.12
315.07/76.06
315.07/7616.90
315.14/76.07
316.01/7607.19
316.01/84.50

- As a result of the restructuring of sanitary articles in HS 2012 the rebate items in Schedule No. 3 are being amended to reflect the correct tariff subheadings of Part 1 of Schedule No. 1.
- A technical correction is made to rebate item 311.40/5408.1/01.05 that should read 311.40/5408.10/01.06.

3.8 Amendment of Schedule No. 4

As a consequence to the restructuring of fish in heading 03.03, vegetable products of headings 07.12 and 07.13, dried Capsicum in heading 09.04, wheat in heading 10.01, fruit juices in heading 20.09 and light fuel preparations in heading 27.10 in HS 2012, the rebate items in Schedule No. 4 are amended to reflect the correct subheadings accordingly.

3.9. Amendment of Schedule No. 5

Drawback item 511.16/3823.90 has become redundant as subheading 3823.90 is free of duty. As a consequence the drawback item is being deleted.

3.10 Amendment of Schedule No. 6

- Editorial amendment to rebate items 620.00 and 621.00 to remove certain heading descriptions that were not linked to specific rebate/refund item numbers.
- Rebate provision for mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages used in the manufacture of sparkling beverages is created in Part 1 of Schedule No. 6 is created as a result of a request for amendment received from the wine industry.

The rebate item will prevent double taxation of the fermented beverages that are used in the manufacture of sparkling beverages and SARS, therefore, supports this request.

The structure for rebate item 620.10 will be amended as follows:

620.10;
 620.10/104.17.15;
 620.10/104.17.16;
 620.10/104.17.22; and
 620.10/104.17.25.

- As a consequence to the restructuring of light fuel preparations, biodiesel and water pipe tobacco in HS 2012, the rebate items in Schedule No. 6 applicable to these products are amended accordingly.

Part 2A of Schedule No. 1 is amended to reflect the transposition of biodiesel, tobacco, including water pipe tobacco and light oils and preparations as well as halogenated derivatives of hydrocarbons.

Part 2B of Schedule No. 1 is amended to reflect the transposition of video games used with a television receiver and electric vehicles.

Part 5A and Part 5B of Schedule No. 1 are amended to reflect the transposition of light oils and preparations as well as biodiesel.

Schedule No. 3 is amended to reflect the transposition of certain parts of footwear.

Substitute

312.01/4104.4

312.01/6406.90/01.06 to 03.06

Schedule No. 3 is amended to reflect the transposition of provisions for the manufacture of sanitary articles and napkins for babies as follows:

Delete

310.09

311.33

Insert

320.12/3919.10

320.12/3920.10

320.12/3920.20

320.12/5404.11

320.12/54.07

320.12/5603.1

320.12/5603.9

320.12/58.11

320.12/5903.90

Schedule No. 4 is amended to reflect the transposition of certain fish species in heading 03.03

Delete

460.01/0303.2

Substitute
460.01/0303.1

Schedule No. 4 is also amended to reflect the transposition of certain edible vegetable, wheat, fruit juices and light oils and preparations

Delete
460.02/0904.20
460.02/1001.90

Substitute
460.04/2009.89
460.24/2710.12
496.00/2710.12/01.06 and 02.06

Insert
460.02/0904.2
460.02/1001.9
460.25/0713.60

Schedule No. 6 is amended to the reflect the transposition of tobacco, including water pipe tobacco and biodiesel

Substitute
622.07/104.35
622.12/104.35
622.15/104.35
622.22/104.35
623.01
623.02
623.03
623.05
623.06
623.09
623.10
623.11
623.12
623.13
623.19
623.21
623.23
623.25