EXCISE

EXTERNAL POLICY

PROVISIONAL PAYMENT
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1 SCOPE

a) The policy describes how Provisional Payments [(PPs) - DA 70] are normally lodged to secure duties, levies and/or VAT pending compliance of a condition by the client.

b) Where a client contravenes the Act and a deposit is lodged in terms of Section 91, a PP is also made.

c) This document does not cover:

i) Payments made at cash offices as this is taken up in document BP-02;
ii) Bonds as this is taken up in document SE-FS-05;
iii) Completion of the DA 70 as this is taken up in document SE-FS-13; or
iv) Customs; and
v) Provisional Payments accepted on PPS (Passenger Processing System)

2 POLICY

2.1 Authentication

a) Clients that change their banking details must verify them in person with their respective supporting documents at a Branch Office (BO) for authentication.

b) No refund or payment can be made if the banking details are not captured and authenticated on the relevant system. For the process of authentication refer to SE-FS-02.

2.2 Uses of a provisional payment

a) PPs are lodged in order to protect revenue which is due, or may become due, to Excise pending compliance of a condition by the client.

b) In cases of “possible underpayments” in duty/levy and/or VAT on Excisable products, clients are not required to sign the admission of guilt portion of a PP. An example of this would be where a client does not submit his monthly Excise account and validating bills of entry, but makes payment. The payment will then be made on a “Departmental” PP.

c) Cash deposits on PPs (DA 70s) in lieu of bonds are no longer accepted for surety for any new applications (SE-FS-05).

2.3 Time periods allowed

a) PPs must always indicate a specified period of time within which the conditions should be met.

b) Unless a longer period is dictated by the nature of the matter, the period should rarely be more than three (3) months and then only with the permission of the Controller/Branch Manager and must never exceed twenty (20) months.

c) These dates are set from the date of lodging of the provisional payment as indicated below:

   i) PP lodged pending production of any documents, e.g. invoice, transport document, proof of payment = fourteen (14) days.
   ii) PP lodged pending production of any document for the purposes of any other Act, is strictly fourteen (14) days. A PP may not be lodge for permits or certicates.
   iii) PP lodged pending a decision to be made by the Commissioner with regards to a suitable penalty = sixty (60) days
   iv) PP lodged pending payment in instalments = Time period depending on time period decided by Debt Management as indicated on the letter of demand.
   v) PP lodged pending a value determination (VDN) to be made by the Commissioner = ninety (90) days.
   vi) Pending production of literature or confirm correct tariff heading (14 days).
2.4 Liquidation of provisional payments

a) An application to liquidate a PP may be received:
   i) From the client once the conditions under which the PP was lodged are complied with; or
   ii) Where an Internal Administrative Appeal Committee makes a decision to refund a part or the full amount of a PP deposited by a client.

b) The following PPs will only be liquidated once all instalments are paid up or court cases are finalised:
   i) PPs covering payments of schedules or amounts in instalments; or
   ii) PPs covering possible duties/levies and/or VAT and penalties pending the outcome of court cases or appeals.

2.5 Keeping of records

a) Every client must keep for record purposes for a period of five (5) years:
   i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
   ii) Any data related to such documents created by means of a computer.

b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A).

c) Every client must produce such books, accounts and documents on demand.

2.6 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 or cancellation of registration, license or accreditation.

2.7 Appeals Against Decisions

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 ADR (Alternative Dispute Resolution) 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.

3 REFERENCES

3.1 Legislation

<table>
<thead>
<tr>
<th>TYPE OF REFERENCE</th>
<th>REFERENCE</th>
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<tbody>
<tr>
<td>Legislation and Rules administered by SARS:</td>
<td>Customs and Excise Act No. 91 of 1964: Sections 3(1), 40, 47(9), 55(2)(b), 57(A)(1)-(3),(5), 60, 64, 65, 76(4)(a), 76B, 80, 81, 83, 84, 87, 88, 91, 93, 98, 99, 101, 101A, 107 and 113</td>
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<td>Customs and Excise Rules:</td>
<td>Rules 40.01, 65.01 to 65.03 and 76.01 to 76.03.</td>
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<td>Other Legislation:</td>
<td>Bill of Exchange Act No. 34 of 1964: All Interpretation Act No. 33 of 1957: Sections 2 and 4 Payments Association of South Africa (PASA): All Promotion of Administrative Justice Act No. 3 of 2000: Sections 3 and 5 Public Finance Management (PFMA) Act No. 1 of 1999: Sections 7, 12, 21, 29, 40(1a),45, 76(2)(h), 51 and 55 Tax Administration Act No. 28 of 2011: All Treasury Regulations issued in terms of PFMA Act No. 1 of 1999: Part 5 paragraphs 11.3 and 15.4; Part 6 paragraphs 15.9 and 15.12; Part 7 paragraphs 17.2 and 18</td>
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<tr>
<td>International Instruments:</td>
<td>International Financial Reporting Standards (IFRS): All Generally Accepted Accounting Practice (GAAP): All Generally Recognised Accounting Practice (GRAP): All</td>
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3.2 Cross References

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<th>DOCUMENT #</th>
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<tr>
<td>BP-02</td>
<td>Payments – External Policy</td>
<td>All</td>
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<td>SC-CC-24</td>
<td>Administrative Appeal – External Policy</td>
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<td>SC-CC-26</td>
<td>Alternative Dispute Resolution – External Policy</td>
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<td>SE-FS-02</td>
<td>Licensing and Registration – External Policy</td>
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<td>SE-FS-05</td>
<td>Bonds – External Policy</td>
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<td>SE-FS-12-S01</td>
<td>Provisional Payments – External SOP</td>
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<td>SE-FS-13</td>
<td>Completion of DA 70 – External Manual</td>
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4 DEFINITIONS AND ACRONYMS

<table>
<thead>
<tr>
<th>Controller/Branch Manager</th>
<th>The officer designated by the commissioner to be the Controller/Branch Manager of Customs and Excise in respect of that area or matter and includes officer acting under the control or direction of any officer so designated by the Commissioner.</th>
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<tbody>
<tr>
<td>VAT</td>
<td>Value-Added Tax</td>
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5 DOCUMENT MANAGEMENT

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<tr>
<th>Business Owner</th>
<th>Executive: Compliance Centre Operations</th>
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<tr>
<td>Document Owner</td>
<td>Executive: Process Solutions Customs &amp; Support Services</td>
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<tr>
<td>Author</td>
<td>A.Maraïs</td>
</tr>
<tr>
<td>Detail of change from previous revision</td>
<td>Amending paragraph 2 by inserting authentication; Inserting paragraph 2.2(c); and The reference number has been changed from SE-EXC-10 to SE-FS-12.</td>
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<tr>
<td>Template number and revision</td>
<td>ECS-TM-02 - Rev 12</td>
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