# APPLICATION FOR ALTERNATIVE DISPUTE RESOLUTION (ADR) IN TERMS OF THE CUSTOMS AND EXCISE ACT, 1964

**Purpose:**
To apply for Alternative Dispute Resolution proceedings in accordance with the procedures contemplated in the rules for section 77I of the Customs and Excise Act, 1964.

**Notes:**

(1) Where the space provided is insufficient please make use of an extension page and attach it to this application form.
(2) Pages attached must be sequentially numbered and the total number thereof must be stated in the field provided.

**Details of Applicant:**

| Full name | Customs Client Number | Name of Agent / Consultant | Agent / Consultant Customs Client Number |
|---|---|---|---|
| | | | |

**Address for delivery of documents**

| | | | |
|---|---|---|---|
| Registered name of business or name of applicant | | | |
| Business address: Street name and number | | | |
| Building name and floor number | | | |
| Suburb | | | |
| City / Town | | Street code | |
| Postal Address | | | |
| Suburb | | | |
| City / Town | | Postal code | |
| Business telephone and fax numbers (including code) | (…..) | (…..) | |
| Business email address: | | | |

**Nature of dispute:** (Indicate with an **X** in the applicable block(s))

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Customs duty | | VAT | | Excise duty | | Ad Valorem Customs / Excise duty | | Environmental levy | | Fuel levy | |
| Rebates | | Refunds | | Warehousing | | Penalty | | Forfeiture | | Interest | |
| Exports | | Registration / Licensing | | Other | | | | | | | |

| | | | |
|---|---|---|---|
| Office that made the original decision / | | Date of original decision | C C Y Y M M D D |
| Name of office and person / committee who disallowed the Internal Administrative Appeal | | Date of notice of disallowance of Internal Administrative Appeal | C C Y Y M M D D |

**Grounds on which ADR is being applied for:**

| | |
|---|---|
| | |
| | |
| | |
| | |
| | Nr of pages attached to this form |

**Declaration:**

I hereby apply that the above matter be referred to the Alternative Dispute Resolution process and **declare** that I –

(1) have attached a copy of the notice of disallowance of the internal administrative appeal to this form;
(2) have fully stated the grounds on which ADR is being applied for;
(3) have attached all relevant documentation in respect thereof; and
(4) have read and signed the terms of Alternative Dispute Resolution on the reverse side of this document.

**Signature**

| Full Name | Signature | Date | Capacity |
|---|---|---|---|
| | | C C Y Y M M D D | |

**Deliver as prescribed in paragraph 6 of the terms of alternative dispute resolution (ADR)**

## THE TERMS OF ALTERNATIVE DISPUTE RESOLUTION ("ADR")

**1. Main Rule**

ADR is only available if these terms are accepted. Both the Commissioner and the aggrieved person have to agree to the ADR process for any agreement or settlement to have any effect.

**2. Who may initiate ADR?**

ADR may be initiated by–

*(a)* a person dissatisfied with a decision of the Commissioner or an appeal committee under the internal administrative appeal procedure contemplated in part A of Chapter XA of the Act; or

*(b)* the Commissioner subsequent to the receipt of a notice in terms of section 96(1) of the Act where he or she is of the opinion that the matter is appropriate for ADR.

**3. ADR following the disallowance of an internal administrative appeal**

*(a)* A person who appealed against any decision of the Commissioner and whose appeal has been disallowed in whole or in part by the Commissioner or an appeal committee under the internal administrative appeal procedure contemplated in Part A of Chapter XA of the Act, may apply for ADR.

*(b)* An application for alternative dispute resolution must, unless the Commissioner agrees to extend the period, be submitted to the Commissioner on form DA 52 within 30 days from the date of the notice informing the appellant that his or her appeal has been disallowed.

*(c)* The Commissioner must, within 20 days of receipt of an application for alternative dispute resolution, inform the applicant by notice whether the matter is appropriate for alternative dispute resolution.

**4. ADR as an alternative to judicial proceedings**

Where a person has delivered a notice to the Commissioner in terms of section 96(1) of the Act and the Commissioner is of the opinion that the matter is appropriate for alternative dispute resolution he or she must inform that person within ten days of the receipt of such notice.

**5. Acceptance of ADR**

*(a)* Where a person referred to in paragraph 4 does not agree to alternative dispute resolution he or she must notify the Commissioner within ten days from the date of the notice by the Commissioner.

*(b)* Where a person referred to in paragraph 4 agrees to alternative dispute resolution he or she must deliver a form DA 52 to the Commissioner within ten days of the date of the notice by the Commissioner.

**6. How must application be made for ADR?**

Application for ADR must be made on a form DA 52 which must be duly completed and supported by all relevant documents and then delivered –

*(a)* in the circumstances contemplated in paragraph 3, to the Commissioner or the chairperson of the appeal committee, as applicable;

*(b)* in the circumstances contemplated in paragraph 4, as prescribed in the rules for section 96 of the Act.

**7. The Facilitator**

*(a)* The Commissioner must, within 15 days after he or she has notified that the dispute may be referred to ADR, or within 15 days after receipt of an application form DA 52, as the case may be, appoint a facilitator to facilitate the ADR process.

*(b)* The Commissioner must inform the aggrieved person of who has been appointed as facilitator.

*(c)* The facilitator will, in the normal course, be an appropriately qualified officer of SARS and will be bound by a Code of Conduct.

*(d)* The facilitator's objective is to seek a fair, equitable and legal resolution of the dispute between a person and the Commissioner.

*(e)* The facilitator cannot make a ruling or decision which binds the Commissioner or a person nor may he or she compel the person and the Commissioner to settle the dispute.

*(f)* At the conclusion of the ADR process the facilitator must record the terms of any agreement or settlement reached by the parties, or, if no agreement or settlement is reached, he or she shall record that fact.

*(g)* The facilitator has the authority to summarily terminate the process of dispute resolution without prior notice if -

(i) any person fails to attend the meeting referred to in paragraph 9;

(ii) any person fails to carry out a request made in terms of paragraph 8;

(iii) he or she is of the opinion that the dispute cannot be resolved;

(iv) either of the parties agree that the issues in dispute cannot be reconciled in the resolution process; or

(v) for any other appropriate reason.

**8. Determining the process**

The facilitator must, after consulting the aggrieved person and the officer(s) or committees of SARS responsible for the decision under dispute -

*(a)* determine the procedure to be adopted in the dispute resolution process;

*(b)* determine a place, date and time at which the parties shall convene the ADR meeting; and

*(c)* notify each party in writing which written submissions or any other document should be furnished or exchanged (if this is required at all), and when the submissions or documents are required.

**9. ADR Meeting**

A meeting between the parties to the dispute must be held for the purpose of resolving the dispute by consent, within 20 days of the appointment of the facilitator, or within such further period as the Commissioner and the aggrieved person may agree.

**10. Rules for the ADR Meeting**

*(a)* The aggrieved person or the representative of the aggrieved person must be personally present during the ADR meeting and may be accompanied by a representative of his or her choice.

*(b)* The facilitator may, in exceptional circumstances, excuse the aggrieved person from personally attending the meeting in which event he or she may be represented in their absence by a representative of their choice.

*(c)* The meeting must be concluded -

(i) at the instance of the facilitator; or

(ii) after the parties agree that the meeting shall be concluded.

*(d)* If both parties and the facilitator agree, the meeting may resume at any other place, date or time set by the facilitator.

*(e)* The parties may for the purpose of resolving an issue in dispute, and only if the facilitator agrees, lead or bring witnesses in the ADR process.

*(f)* The facilitator may require either party to produce a witness to give evidence.

*(g)* At the conclusion of the meeting the facilitator must record -

(i) all issues which were resolved (through the ADR process);

(ii) any issue upon which agreement or settlement could not be reached; and

(iii) any other point which the facilitator considers necessary.

*(h)* The facilitator must deliver a report to the aggrieved person and the Commissioner's designated representative within ten days of the cessation of the ADR process.

*(ij)* The facilitator may, if requested at the commencement of the ADR process, make a recommendation at the conclusion of the proceedings if no agreement or settlement is ultimately reached between the parties.

**11. Reservations of rights**

*(a)* The proceedings may not be electronically recorded, and any representations made in the course of the meeting will be without prejudice.

*(b)* Any representation made or document tendered in the course of the dispute resolution proceedings may not be tendered in any subsequent proceedings as evidence by any other party, except in the circumstances contemplated in rule 77I.16*(b)*.

*(c)* Neither party, except in the circumstances contemplated in rule 77I.16*(b)*, may *subpoena* any person involved in the alternative dispute procedure in order to compel disclosure of any representation made or documentation produced in the course of the ADR process. The facilitator may not be *subpoenaed* under any circumstances.

*(d)* Any recommendation made by the facilitator in terms of paragraph 10*(ij)*, will be admissible during any subsequent proceedings including court proceedings.

**12. Agreement or Settlement**

*(a)* Any agreement or settlement reached between the parties must be recorded in writing and must be signed by the aggrieved person and by the Commissioner's designated official.

*(b)* Should the parties not resolve all issues in dispute, the agreement or settlement in paragraph *(a)* must stipulate those areas in dispute –

(i) that are resolved; and

(ii) that could not be resolved and on which the person may institute judicial proceedings in a competent Court.

*(c)* Any agreement or settlement reached through the ADR process has no binding effect in respect of any other matters relating to that aggrieved person not actually covered by the agreement or settlement, or any other person.

**13. Days**

A day has the meaning as defined in section 77A(1) of the Act.

I hereby agree and confirm that the terms of the ADR process shall apply to the resolution of the dispute:

Signed at: this day of 20

| Full Name | Signature | Capacity |
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