

**Draft amendments to the rules under sections 40(3)(a)(i)(C) and 41(4)(b) and
120**

GENERAL EXPLANATORY NOTE:

- [] Words that are between square brackets and in bold typeface, indicate deletions from the existing rules
- _____ Words that are underlined with a solid line, indicate insertions in the existing rules
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SOUTH AFRICAN REVENUE SERVICE

No. R.

2025

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

Under sections 41 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.....**

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

SCHEDULE

Insertion of rule

1. The following rule is hereby inserted after rule 40.02:

“Manner in which bills of entry may be adjusted where customs value declared is affected by transfer pricing adjustments

40.03 Where, as a result of a transfer pricing adjustment as defined in rule 41A.01(a) an adjustment to a bill of entry is required in terms of section 40(3)(a)(i) in relation to the customs value of goods, the relevant bills of entry may be adjusted by following the process contemplated in rule 41A.01.”.

Insertion of rule

2. The following rules are hereby inserted after rule 41.05:

“Submission of notice of amended invoices or debit or credit notes where customs value is affected by transfer pricing adjustments

41A.01 (a) For purposes of this rule—

“adjustment factor” means the percentage by which each affected line item on a bill of entry is adjusted, which percentage is determined by the following formula:

[(Total Revised Customs Value less Previous Customs Value)/ Previous Customs Value];

“adjustment period” means the accounting period to which the transfer pricing adjustment relates;

“Customs Value Adjustment Calculation spreadsheet” or **“CVAC”** means a spreadsheet reflecting the importer’s calculation to determine the adjustment factor to be applied in recalculating the customs value, customs duties and value added tax in respect of imported goods affected by a transfer pricing adjustment, and containing the information listed in paragraph (d)(iv);

“related party” means a person contemplated in section 66(2)(a); and

“transfer pricing adjustment” in relation to the customs value of goods, means an adjustment to the price at which

goods were imported into the Republic by a multinational enterprise from a related party.

(b) Where in circumstances contemplated in section 41(4)(b)(ii)(aa), an exporter has effected an amendment to an invoice by issuing an amended invoice or a debit or credit note to reflect any transfer pricing adjustment, the importer must, subject to paragraph (c), within the timeframe referred to in section 41(4)(b)(ii)(bb) disclose the circumstances of such transfer pricing adjustment to SARS by submitting a letter of notification on the letterhead of the importer or of the importer's duly authorised representative—

- (i) via e-mail to CustomsTPsubmissions@sars.gov.za; or
- (ii) by hand to any customs office.

(c) Prior to submission of the letter of notification as set out in paragraph (b), the importer or the importer's duly authorised representative must obtain the latest data in relation to all bills of entry affected by the relevant transfer pricing adjustment with SARS' department of Trade Statistics.

(d) A letter referred to in paragraph (b) must indicate whether the pricing adjustment is an interim or final adjustment for the relevant financial year, and be accompanied by –

- (i) a letter of authorisation in respect of submission by a representative in circumstances where the notification is submitted by a registered agent, clearing agent or other representative;
- (ii) any relevant amended invoice or debit or credit note issued by the exporter;
- (iii) the applicable transfer pricing policy, compensation calculation, detailing how transfer prices are determined, and adjustments are to be made;

- (iv) a completed Customs Value Adjustment Calculation spreadsheet (CVAC) of which a pro-forma copy is published on the SARS website, reflecting –
- (aa) the name and customs and excise client number of the importer;
 - (bb) the name and customs and excise client number of the importer's agent, if submitted by an agent;
 - (cc) the name of supplier;
 - (dd) the year and month when the adjustment is effected;
 - (ee) the adjustment period;
 - (ff) the reference number of the relevant amended invoice or debit or credit note;
 - (gg) the movement reference number (MRN) as well as the local reference number (LRN) of all bills of entry affected by changes in customs value declared due to the relevant transfer pricing adjustments;
 - (hh) the version number;
 - (ii) the original movement reference number of all bills of entry affected by changes in customs value declared due to the relevant transfer pricing adjustments;
 - (jj) the tariff heading of the affected goods;
 - (kk) the item number of the affected goods;
 - (ll) the value of the affected goods;
 - (mm) the adjustment factor percentage used to determine the adjustment to the value as reflected in the transfer pricing policy referred to in subparagraph (iii);
 - (nn) the revised customs value of the affected goods;

- (oo) the effect of the changes indicated on the customs duty and VAT in respect of the relevant bill of entry; and
 - (pp) a declaration by the importer or that importer's authorised representative that the particulars provided are true and correct;
 - (v) signed annual financial statements for the relevant adjustment period, or the latest available signed financial statements;
 - (vi) the following documents or information if such documents or information are applicable in the circumstances and relate to the relevant transfer pricing adjustment:
 - (aa) Purchase and sale agreements;
 - (bb) distribution agreements together with all amendments and annexures;
 - (cc) segmented financial data of the various business segments, in respect of all revenue, costs of sales, income and expenditure used in calculating the various business segments operating profit or loss for the relevant periods to which the transfer pricing adjustments have been applied;
 - (dd) royalty and licence fee agreements; and
 - (ee) any other relevant documentation required for purposes of validating the retrospective adjustments and assessing the impact of such adjustments on the customs value, duties and VAT payable.
- (e) If any information or documents referred to in paragraph (d) is not available at the time of submission of the notification letter referred to in paragraph (b), an importer may –

- (i) submit a request for extension to the Commissioner at CustomsTPsubmissions@sars.gov.za; and
 - (ii) if such request is approved, submit such information within a timeframe indicated in the approval.
- (f) The pro forma Customs Value Adjustment Calculation spreadsheet referred to in paragraph (d)(iv) serves as guidance on how a CVAC should be prepared by an importer, who must ensure that any information provided is complete, accurate and calculated correctly, and that the CVAC accurately reflects the relevant transfer pricing adjustments and amounts payable or refundable.
- (g) An importer who has submitted a notification in terms of this rule –
 - (i) is entitled to be informed in writing of whether the CVAC is accepted by the Commissioner, provided that such acceptance does not indemnify the importer against subsequent audit findings or any fine or penalty provided for in the Act;
 - (ii) must comply with any further instructions issued by the Commissioner in relation to additional relevant information to be supplied; and
 - (iii) must, if the adjustment is accepted, follow the process set out in –
 - (aa) rule 41A.02 for payment of customs duties and VAT; or
 - (bb) rule 41A.03 for claiming a refund.

Payment of duty and VAT due after transfer pricing adjustments

41A.02 If, as a result of a transfer pricing adjustment effected in accordance with rule 41A.01, an amount of duty and VAT is payable to SARS the relevant importer must within seven days of being informed by the Commissioner in writing of acceptance of the CVAC as contemplated in rule 41A.01(g)(i), by way of the issuance of a Customs and Excise Billing Declaration (form CEB01) transfer the amount payable by electronic funds

transfer to SARS making use of the unique payment reference number (PRN) indicated on form CEB01.

Applications for refunds due to importers after transfer pricing adjustments

- 41A.03** (a) If, as a result of a transfer pricing adjustment effected in accordance with rule 41A.01 a refund is due to an importer, application for such refund must be made by submitting, in respect of each affected bill of entry, a voucher of correction reflecting a refund amount and a refund indicator.
- (b) A transfer pricing adjustment effected in accordance with rule 41A.01 together with any voucher of correction contemplated in paragraph (a) is regarded as an application for a refund.

Implementation arrangements

41A.04 Any adjustment to a bill of entry to be effected as a result of an amended invoice or a debit or credit note relating to transfer pricing adjustments issued in terms of section 41(4)(b) after the effective date of rules 40.03 and 41A.01, must be effected in accordance with the process contemplated in those rules."