Draft rules for Voluntary Disclosure Relief under section 77ZH

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. 2026

CUSTOMS AND EXCISE ACT, 1964

AMENDMENT OF RULES

Under sections 77ZH 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 …**

Date to be determined

NGOBANI JOHNSTONE MAKHUBU

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Insertion of rules

1. The following rules are hereby inserted under Chapter XB:

“CHAPTER XB

VOLUNTARY DISCLOSURE RELIEF

RULES FOR SECTION 77ZH OF THE ACT

Part 1: Interpretation

Definitions

77ZH.01 For the purposes of these rules and any form or other document to which these rules relate, a word or expression to which a meaning has been assigned in the Act bears the meaning so assigned, and unless otherwise specified or the context otherwise indicates—

“applicant” means a person applying for voluntary disclosure relief under Chapter XB;

“application for VDR” means an application in terms of rule 77ZH.02;

“branch front end capturing” or “BFE capturing”, in relation to an application, means the electronic capturing by an officer at any SARS office, of information provided by the applicant as may be required for such application on the internal SARS electronic system used for purposes of processing of such applications;

“eFiling” means a SARS software application available on the SARS website which enables SARS and registered electronic users to generate and deliver electronic filing transactions;

“factual basis”, in relation to an underpayment, includes –

(a) the circumstances that gave rise to the underpayment, including whether any event, including an audit, investigation or enforcement action triggered the disclosure;

(b) whether the underpayment consists of a non-payment, inadequate payment or receipt of a refund, rebate, drawback, payment or setting off to which the applicant was not entitled;

(c) the relevant legal provision that imposes the duty that had not been paid or had been underpaid, that authorises the rebate, drawback, payment or setting off to

which the applicant was not entitled, or imposes the obligation that was contravened, depending on the circumstances;

(d) the amount of the underpayment; and

(e) the current location of the relevant goods, if applicable;

"form VDP01" means the electronic application for purposes of applying for VDR;

"submission letter", in relation to an application for VDR, means a document referred to in rule 77ZH.04*(a)*(iii), submitted in support of the application;

"these rules" means the rules numbered 77ZH;

"underpayment" means an underpayment as defined in section 77Z; and

"VDR" means customs and excise Voluntary Disclosure Relief as contemplated in Chapter XB.

Part 2: Application process and Voluntary Disclosure Agreement

Application for VDR

77ZH.02 *(a)* An application for VDR must be submitted electronically on form VDP01 through–

(i) eFiling; or

(ii) BFE capturing by visiting a SARS Office where this service is available, as indicated on the SARS website.

(b) The application must reflect –

(i) that it is an application for customs and excise VDR;

(ii) if the application is submitted by a representative on behalf of the applicant –

(aa) whether the representative is duly authorised;

(bb) the representative's customs and excise client number, if applicable;

(cc) the name, surname and initials of the representative;

(dd) the identification number of the representative, if applicable;

(ee) the passport number of the representative and

country of issue;

(ff) the representative's contact details, including business telephone number and cellular phone number; and

(gg) the capacity of the representative;

(iii) in relation to the applicant –

(aa) the customs and excise client number;

(bb) if the applicant is a natural person:

(A) Name, surname and initials;

(B) date of birth;

(C) identification number, if applicable;

(D) passport number and issuing country;

(E) marital status, if applicable; and

(F) contact details, including business telephone number and cellular phone number;

(cc) in the case where the applicant is a juristic entity:

(A) The registered name and trading name;

(B) the registration number; and

(C) contact details, including business telephone number and cellular phone number;

(iv) the preferred address or e-mail address for purposes of communication in relation to the application;

(v) full and complete details of the disclosure as described in rule 77ZH.03, depending on the nature of the underpayment, including a motivation showing how the applicant meets each of the other requirements for voluntary disclosure set out in section 77ZB, which must be provided in a separate submission letter; and

(vi) a declaration that the information provided is full and complete in all material respects.

Full and complete disclosure of underpayment for purposes of section 77ZB in relation to application for VDR

77ZH.03 *(a)* An applicant for VDR must for purposes of section 77ZB*(c)* read with rule 77ZH.02*(b)*(v) provide the information set out in this rule, as may be applicable to the relevant disclosure in a submission letter referred to in rule 77ZH.04*(a)*(iii).

(b) Where the application relates to an underpayment concerning the submission of a bill of entry, the following information must be reflected –

(i) in the case of the non-submission of a bill of entry:

(aa) The invoice number and date:

(bb) the transport document number and date;

(cc) the place of entry or exit through which the goods were imported or exported;

(dd) how detection of the goods by officers was avoided; and

(ee) the details of the parties involved in the importation or exportation of the goods, including –

(A) the details of any international and local transporters involved in the transport of the goods, where applicable;

(B) the details of any person to whom the goods have been supplied; and

(C) the details of any warehouse or storage premises where goods may have been deposited;

(ii) in the case of submission of a bill of entry not valid in terms of section 40(1):

(aa) The movement reference number and date; and

(bb) the purpose code declared on the bill of entry, if applicable;

(iii) in the case of submission of a bill of entry in relation to a fictitious or misrepresented export:

(aa) Details in relation to the fictitious or misrepresented export, including –

(A) the declared destination of the goods and the person to whom the goods were supplied locally;

(B) whether the goods were loaded for export under customs supervision;

(C) if applicable, how any false acquittals or proof of export were obtained at the place of exit; and

(D) if applicable, how the goods were diverted or smuggled back into the Republic;

(iv) whether the disclosure relates to a bill of entry in its original form, or amended bill of entry;

(v) the tariff classification, where applicable –

(aa) declared on the relevant bill of entry; and

(bb) proposed by the applicant as correct for purposes of VDR;

(vi) where applicable, the customs value –

(aa) declared on the relevant bill of entry; and

(bb) proposed by the applicant as correct for purposes of VDR;

(vii) where applicable, the origin of the goods –

(aa) declared on the relevant bill of entry; and

(bb) proposed by the applicant as correct for purposes of VDR;

(viii) the period during which the underpayment took place; and

(ix) the factual basis of the underpayment.

(c) Where the application relates to an underpayment concerning the submission of a return or an account, the following information must be reflected:

(i) Whether the disclosure relates to the non-submission of a return or an account, or an under declaration of duty on the return or account;

(ii) a description of the type of return or account and any applicable reference or form numbers;

(iii) the accounting period; and

(iv) the factual basis of the underpayment.

(d) Where the application relates to an underpayment concerning the claiming of a rebate, drawback, refund or payment, or the setting off of any amount to which the applicant was not entitled, the following information must be reflected:

(i) The date of submission of the relevant application for a refund or drawback, and whether the application was submitted electronically or manually in paper format, if applicable;

(ii) the accounting period in relation to the relevant return or account on which the set-off was claimed, if applicable;

(iii) the movement reference number and date of the relevant bill of entry on which the refund or rebate was claimed, if applicable;

(iv) the period during which the underpayment took place; and

(v) the factual basis of the underpayment.

(e) Where the underpayment involves duty referred to in paragraph *(d)* of the definition of "duty" in section 77Z, information related to any behaviour associated with the underpayment as contemplated in section 223 of the Tax Administration Act must be provided.

(f) The applicant must indicate whether there is a tariff, value or origin determination applicable in respect of any of the goods referred to in the disclosure.

Supporting documents for applications for VDR

77ZH.04 *(a)* The following general documents must support an application for VDR contemplated in rule 77ZH.02:

(i) If the applicant is a juristic entity—

(aa) a copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity; and

(bb) a copy of the identification document or passport of an authorised person referred to in item *(aa)*;

(ii) a copy of the document authorising a person referred to in rule 77ZH.02*(b)*(ii) to act as the representative of the applicant; and

(iii) a submission letter setting out –

(aa) a motivation why the disclosure must be considered as voluntary within the meaning of section 77ZA, including details of any audit, investigation or enforcement action that may have an effect on the voluntary nature of the disclosure;

(bb) whether the disclosure falls within the ambit of rule 77ZH.07;

(cc) why the disclosure must be considered as not having occurred within five years of a previous disclosure of a similar underpayment by the applicant;

(dd) full and complete details of the disclosure as set out in rule 77ZH.03;

(ee) why the disclosure will not result in the Commissioner being obliged to pay a refund or drawback or additional refund or drawback; and

(ff) whether the disclosure is impacted by any relevant prescription period in terms of section 44(11) of the Act or section 99(1) or (2) of the Tax Administration Act.

(b) In addition to the general documents referred to in paragraph *(a)*, the following documents must support an application for VDR –

(i) in the case of an application that relates to an underpayment concerning the non-submission of a bill of entry, referred to in rule 77ZH.03*(b)*:

(aa) A draft SAD 500 and SAD 509;

(bb) the relevant invoices;

(cc) customs worksheets; and

(dd) the relevant transport documents;

(ii) in the case of an application that relates to an underpayment concerning the submission of a bill of entry, referred to in rule 77ZH.03*(b)*:

(aa) A draft voucher of correction and SAD 509;

(bb) the relevant invoices;

(cc) customs worksheets; and

(dd) the relevant transport documents;

(iii) in the case of an application that relates to an underpayment concerning the submission of a return or an account referred to in rule 77ZH.03*(c)*, including a set-off to which the applicant was not entitled referred to in rule 77ZH.03*(d)*:

(aa) A draft account or return, or an amended account or return, including the relevant annexures;

(bb) any document that a licensee or registrant is required to keep in terms of any provision of the Act or rules; and

(cc) any document that relates to the underpayment or the contravention that occurred;

(iv) in the case of an application that relates to an underpayment concerning the claiming of a rebate, drawback, refund or payment of any amount to which the applicant was not entitled referred to in rule 77ZH.03*(d)*:

(aa) A draft SAD 500 or voucher of correction, depending on the circumstances, and SAD 509;

(bb) the relevant invoices;

(cc) customs worksheets; and

(dd) the relevant transport documents.

(c) Any other document or information that may be relevant and necessary for consideration of the application must on request be submitted to the Commissioner within the timeframe indicated in the request.

Suspension of finalisation of applications for VDR where determinations are required

77ZH.05 *(a)* Where the consideration and finalisation of an application for VDR is dependent on a tariff, value or origin determination, the application may be suspended until the outcome of the relevant determination is available.

(b) The outcome of a determination must be taken into account for purposes of finalisation of the application for VDR, subject to paragraph *(c).*

(c) An applicant may not use the determination process as a measure to unjustifiably delay the finalisation of the VDR application, and the Commissioner may –

(i) impose a reasonable timeframe for the outcome of the determination;

(ii) after expiry of such timeframe, lift the suspension of the consideration and finalisation of the application and proceed on available information; and

(iii) where a Voluntary Disclosure Agreement as referred to in section 77ZD(2) has been concluded in circumstances contemplated in subparagraph (ii), vary the Agreement if the outcome of the determination materially affects the amount owing.

Form and format of Voluntary Disclosure Agreement

77ZD.06 For purposes of section 77ZH*(d)* a Voluntary Disclosure Agreement contemplated in section 77ZD must in addition to the requirements set out in subsection (2) of that section –

(a) be dated and signed by the recipient of VDR and the Commissioner, and each signature must be attested by two witnesses;

(b) contain arrangements relating to –

(i) withdrawal of relief;

(ii) breach of contract;

(iii) variation of the agreement;

(iv) the giving of notices, documents or communications, and the serving of legal processes; and

(v) any other matter necessary for the effective operation of the agreement.

Part 3: Applications for VDR by persons not registered or licensed and anonymous requests for non-binding private opinions on eligibility for VDR

Applications for VDR by persons not registered or licenced in terms of the Act

77ZH.07 *(a)* A person not registered or licensed as required in terms of the Act who underpaid and wishes to apply for VDR, must before applying in terms of rule 77ZH.02, apply for registration or licensing in terms of section 59A or 60.

(b) An application for VDR received within 21 working days after the date of issue of a registration or licence pursuant to an application contemplated in paragraph *(a)*, is regarded as being voluntary for purposes of section 77ZB*(a)*.

Request for non-binding private opinions on eligibility

77ZH.08 *(a)* A person who wishes to remain anonymous may request a non-binding private opinion on eligibility for VDR by submitting form VDP01 electronically through –

(i) eFiling; or

(ii) BFE capturing by visiting a SARS Office where this service is available, as indicated on the SARS website.

(b) The person making the request must indicate on form VDP01 that the request is for a non-binding opinion on eligibility for VDR.

(c) The information referred to in rule 77ZH.02*(b)*, sufficient for the Commissioner to assess eligibility of the person making the request, must be reflected, excluding any information that may identify the person making the request.

(d) A request for a non-binding private opinion on eligibility for VDR must be supported by a submission letter containing the information referred to in rule 77ZH.04*(a)*(iii), excluding any information that may identify the person making the request.