

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

SOUTH AFRICAN REVENUE SERVICE

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CUSTOMS AND EXCISE ACT, 1964

AMENDMENT OF RULES

Under sections 77H 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.



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COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Amendment of rule 77H.01

1. Rule 77H.01 is hereby amended –
 - (a) by the substitution for the definition of “Customs and Excise Branch Office Appeal Committee” of the following definition:

“**Customs and Excise Branch Office Appeal Committee**” means an appeal committee established in terms of rule 77H.11(1)(a) for a Branch Office or for a number of Offices, irrespective of whether –

- (a) both customs and excise functions are performed by that Branch Office or those Offices;
- (b) only customs functions are performed by that Branch Office or those Offices; or
- (c) only excise functions are performed by that Branch Office or those Offices;”;
- (b) by the insertion after the definition of “eFiling” of the following definition:
““person responsible for managing internal appeals at Head Office” means an official at Head Office to whom the management of internal appeals is assigned by the person entrusted with overall responsibility for Customs and Excise appeals.”
- (c) by the insertion after the definition of “person in charge” of the following definitions:
“person entrusted with overall responsibility for Customs and Excise appeals” means the SARS official to whom the Commissioner has entrusted such responsibility by specific written authority;
“Rules for Electronic Communication” means the rules published in terms of section 255 of the Tax Administration Act, 2011 (Act No. 28 of 2011) by Government Notice No. 644 dated 25 August 2014;”;
- (d) by the insertion of the expression “; and” after the definition of “Tariff, Valuation and Origin Appeal Committee”; and
- (e) by the addition after the definition of “Tariff, Valuation and Origin Appeal Committee” of the following definition:
““these rules” means the rules under section 77H.”.

Insertion of rule 77H.01A

2. The following rule is hereby inserted after rule 77H.01:

“Delivery and receipt of documents or communications (section 77H)

77H.01A (1) When for purposes of these rules a document or communication, including a decision as contemplated in section 77A, is sent by SARS to a person to whom it is addressed by way of –

- (a) e-mail, rule 3(2)(a) of the Rules for Electronic Communication applies and delivery of the document or communication is regarded to occur as set out in that rule;
- (b) eFiling, rule 3(2)(b)(ii) of the Rules for Electronic Communication applies and delivery of the document or communication is regarded to occur as set out in that rule; or
- (c) post, to that person's last known postal address, delivery of the document or communication is regarded to occur at the time when it would, in the ordinary course of post, have arrived at that address.

(2) When in terms of these rules a person required or permitted to submit a document to SARS in a prescribed manner, submits the document or communication –

- (a) by way of e-mail, rule 3(2)(a) of the Rules for Electronic Communication applies and delivery of the document or communication is regarded to occur as set out in that rule;
- (b) by way of eFiling, rule 3(2)(b)(i) of the Rules for Electronic Communication applies and delivery of the document or communication is regarded to occur as set out in that rule; or
- (c) by hand, delivery of the document is regarded to occur when the document is date stamped and signed at the Office indicated in the relevant rule.

(3) A document or communication delivered as contemplated in this rule is for purposes of these rules regarded as having been received by the person to whom it is addressed, unless –

- (a) in the case of a delivery referred to in subrule (1), the Commissioner is satisfied that the document or communication was not received, or was received at another time; or
- (b) a court decides that the document or communication was not received or was received at another time.”

3. Rule 77H.02 is hereby amended –

(a) by the substitution for subrule (4) of the following subrule:

“(4) A person that requested reasons must **[be notified of such reasons in writing]** within 45 days from the date of acknowledgement of receipt referred to in subrule (3)(a) be notified in writing –

(a) of such reasons; or

(b) that any written reasons already provided, are confirmed.”; and

(b) by the substitution for subrule (5) of the following subrule:

“(5) If an aggrieved person intends to submit an appeal against a decision in terms of rule 77H.04 and wishes to request reasons for such decision, a request referred to in subrule (1) must be submitted within 30 days from the date **[the aggrieved person became aware of the decision]**the decision was received in terms of rule 77H.01A(3).”.

Amendment of rule 77H.03

4. Rule 77H.03 is hereby amended by the substitution for the heading of the following heading:

“Application [for Commissioner] to direct suspension of amounts payable to Commissioner (section 77G read with 77H)”.

Amendment of rule 77H.04

5. Rule 77H.04 is hereby amended by the substitution in subrule (2) for paragraph (a) of the following paragraph:

“(a) **[The timeframe within which]** An appeal referred to in subrule (1) must be submitted [is–

(i)]within 30 days from the date when the appellant **[became aware of] received, [the decision,] as contemplated in rule 77H.01A(3) –**

(i) the decision; or

(ii) the reasons for the decision, if reasons were requested for the decision in terms of rule 77H.02[, within 30 days from the date of receipt of the reasons; or

- (ii) if the date on which the appellant became aware of the decision is in dispute, within 30 days from the date on which the applicant is reasonably expected to have become aware of that decision].”.

Amendment of rule 77H.05

6. Rule 77H.05 is hereby amended by the substitution for subrule (3) of the following subrule:

“(3) An application in terms of subrule (2)(a)(ii) and (b) must **[be submitted by making use of the details specified in rule 77H.04(4)(a) or (b)]** –

(a) if sent through e-mail, be directed to the e-mail address indicated on the SARS website for the Office–

(i) that communicated the decision to the appellant; or

(ii) indicated on form SAD 500 as the “office of destination or departure”, in the case of an appeal relating to the declaration process; or

(b) if delivered by hand, be submitted to the Office referred to in paragraph (a)(i) or (ii), depending on the circumstances.”.

Amendment of rule 77H.06

7. Rule 77H.06 is hereby amended by the substitution for subrule (1) of the following subrule:

“(1) If an appeal submitted in terms of rule 77H.04 does not comply with all the requirements for a complete appeal set out in that rule, the appellant is entitled to be notified in writing of the outstanding requirements within **[20] 30** days after acknowledgement of receipt referred to in rule 77H.04(7) had been conveyed to the appellant.”.

Amendment of rule 77H.08

8. Rule 77H.08 is hereby amended by the substitution for subrule (2) of the following subrule:

“(2) **[(a) The Commissioner may by notice to the appellant extend the period referred to in subrule (1) in circumstances and for a period as contemplated in paragraph (b).]**

[(b)] If the Commissioner is of the opinion that more time is required to decide the appeal due to [–

- (i)] the complexity of the matter, the principle or amount involved, or due to [other] exceptional circumstances [deemed reasonable by the Commissioner], the period referred to in subrule (1) may by notice to the appellant be extended by no more than **[30] 45** days, unless a longer period is agreed upon by the parties; or
- (ii) **exceptional circumstances, including circumstances where a formal interpretation by the World Customs Organisation or expert opinion was requested, the period referred to in subrule (1) may be extended by more than 30 days, as may be reasonable in such circumstances].”.**

Amendment of rule 77H.10

9. The following rule is hereby substituted for rule 77H.10:

“Decisions to be dealt with by appeal committees (*section 77H*)

77H.10 An appeal against a decision of an officer or a SARS official or a number of officers or SARS officials acting jointly, must be dealt with by the appropriate appeal committee as set out in rule 77H.11.”.

Amendment of rule 77H.11

10. Rule 77H.11 is hereby amended –

(a) by the substitution in subrule (1) for paragraph (a) of the following paragraph:

“(a) A Customs and Excise Branch Office Appeal Committee –

- (i) **[at] for** any Branch Office as may be approved by the person entrusted with overall responsibility for Customs and Excise appeals [SARS official responsible for managing internal appeals at Head Office]; or
- (ii) for a number of Branch Offices as may be approved by the person entrusted with overall responsibility for Customs and Excise appeals [SARS official responsible for managing internal appeals at Head Office].”;

(b) by the substitution in subrule (2) for paragraph (a) of the following paragraph:

“(a) A Customs and Excise Branch Office Appeal Committee must, subject to paragraph (b), consider and decide appeals in respect of any decision taken by an officer or SARS official, other than the person in charge of the Branch, stationed[—

(i)]at the Branch Office or Offices for which that appeal committee was established[; or

(ii) **in the case of an appeal committee referred to in subrule (1)(a)(ii), at any of the Branch Offices for which that Branch Office Appeal Committee was established].”;**

(c) by the substitution in subrule (2) for paragraph (b) of the following paragraph:

“(b) A Customs and Excise Branch Office Appeal Committee may not — consider and decide an appeal—

(i) if, in the case of an appeal in respect of which it is possible to quantify an amount to which the appeal relates, such amount exceeds **[R10 000 000]** R30 000 000; or

(ii) in relation to **[any]** a decision involving a determination of the tariff, value or origin of goods:

Provided that such committee may consider an appeal in relation to a determination referred to in section 47(9)(a)(i)(bb) made after 1 September 2019 at Branch Office level concerning goods **[contemplated in item 670.04 of Schedule No. 6]** in respect of which the amount to which the appeal relates does not exceed **[R20 000 000]** R30 000 000[.].

and provided further that such committee may consider an appeal only involving the quantum of a penalty or interest which does not exceed R30 000 000, levied in relation to a determination of the tariff, valuation or origin of goods made at branch office or head office level, unless the Commissioner directs otherwise.”;

(d) by the substitution for subrule (3) of the following subrule:

“(3) The Tariff, Valuation and Origin Appeal Committee must, subject to the proviso in subrule (2)(b), consider and decide appeals in relation to **[all]** decisions involving a determination of the tariff, as contemplated in section 47(9)(a)(i)(aa), valuation or origin of goods,

taken at Branch Office level irrespective of the amount to which the appeal relates.”;

- (e) by the substitution in subrule (4) for paragraph (c) of the following paragraph:
- “(c) a decision taken at Branch Office level–
- (i) by a person in charge of a Branch Office; or
 - (ii) in respect of which the amount to which the appeal relates is more than **[R10 000 000]** R30 000 000, in the case of an appeal in respect of which it is possible to quantify an amount; and
 - (iii) pursuant to an application referred to in rule 77H.03; and”;

(f) by the insertion of the following subrules after subrule (4):

“(5) An appeal committee must, when considering an appeal in terms of this rule, also consider a decision incidental to the decision appealed against and consequentially impacted by that decision.

(6) An appeal committee referred to in –

- (a) subrule (1)(a) may, when considering and deciding an appeal relating to a determination referred to in section 47(9)(a)(i)(bb), confirm or amend such determination, or withdraw such determination and make a new determination; and
- (b) subrule (1)(b) or (c) may, when considering and deciding an appeal relating to a determination of the tariff, valuation or origin of goods, confirm or amend such determination, or withdraw such determination and make a new determination.”.

Substitution of rule 77H.12

11. Rule 77H.12 is hereby amended –

- (a) by the substitution in subrule (1) for subparagraph (iii) of paragraph (a) of the following subparagraph:
- (iii) the person responsible for managing Tariff, Valuation and Origin at Head Office [officer or SARS official responsible for managing internal appeals at Head Office], in the case of[–
 - (aa)]** the Tariff, Valuation and Origin Appeal Committee referred to in rule 77H.11(1)(b); and

[(bb) the Customs and Excise National Appeal Committee referred to in rule 77H.11(1)(c); and]”;

(b) by the insertion in subrule (1) after subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iv) the person responsible for managing internal appeals at Head Office in the case of the Customs and Excise National Appeal Committee referred to in rule 77H.11(1)(c); and”;

and

(c) by the substitution in subrule (1) for paragraph (b) of the following paragraph:

“(b) at least four additional committee members with the necessary knowledge and skills to consider and deal with an appeal brought before the relevant appeal committee appointed, subject to subrule (2), in accordance with terms of reference referred to in rule 77H.14 approved by the [Chairperson -] person entrusted with overall responsibility for Customs and Excise Appeals.

[(i) from officers or SARS officials—

(aa) under his or her control, in the case of an appeal committee referred to in paragraph (a)(i); or

(bb) representing each of the Branch Offices for which the appeal committee is constituted, in the case of an appeal committee referred to in paragraph (a)(ii):

Provided that in the case of an appeal involving an excise matter, members may include officers or SARS officials with the relevant specialised knowledge of excise who do not fall within the categories referred to in item (aa) and (bb); or

(ii) in the case of an appeal committee referred to in rule 77H.11(1)(b) and (c), from officers or SARS officials, irrespective of whether such officers or officials are under the control of the Chairperson or from other divisions or regions of SARS.]”.

Amendment of rule 77H.13

12. Rule 77H.13 is hereby amended –

- (a) by numbering the current provision as subrule (1); and
- (b) by the addition of the following subrule after re-numbered subrule (1):
- “(2) Terms of reference referred to in rule 77H.14 may set out powers or duties in addition to those referred to in subrule (1) in relation to the operation of an appeal committee.”.

Substitution of rule 77H.14

13. The following rule is hereby substituted for rule 77H.14

“Procedural matters relating to the operation of appeal committees
(section 77H)

77H.14 The composition and convening of, and procedures at, meetings and administration of an appeal committee established in terms of rule 77H.11 including quorum requirements, as well as any other matter necessary for the proper functioning of the appeal committee, must be in accordance with any applicable terms of reference approved by the person entrusted with the overall responsibility for Customs and Excise appeals, regulating the procedural matters and operational requirements of the relevant appeal committee, issued by SARS and published on the SARS website.”.

Insertion of rule

14. The following rule is herewith inserted after rule 77H.14:

“Decisions of Appeal Committees *(section 77F read with 77H)*

77H.15 The Commissioner’s authority contemplated in section 77F is delegated to the person entrusted with overall responsibility for Customs and Excise appeals.”.

Transitional arrangement

15. (1) For purposes of this item –

“effective date” in relation to the amendments set out in this Schedule means the date on which such amendments come into effect; and

“amended rules” means the rules under section 77H of the Customs and Excise Act, 1964, in relation to internal appeals, as amended by this Notice.

(2) An appeal submitted in terms of the rules under section 77H of the Customs and Excise Act, 1964, before the effective date must –

- (a) in the case where consideration has not commenced yet, be dealt with in accordance with the amended rules; and
- (b) in the case where consideration has already commenced on the effective date, be completed in accordance with the rules as they existed immediately before the effective date.