



Customs Duty Implications on Imported Goods

Customs & Excise



South African Revenue Service

Customs Duty Implications on Imported Goods

Preface

This guide will assist you in determining your customs duty implications on imported dutiable goods. It excludes “excisable goods” specified in Part 2 of Schedule 1 imported into or manufactured in the Republic and goods imported through the post and by travellers.

It does not go into comprehensive technical and legal detail and should therefore not be used as a legal reference.

This guide has no binding legal effect.

For more information, assistance and guidance you may –

- visit the **SARS website**;
- contact the SARS National Contact Centre –
 - if calling locally, on 0800 00 7277;
 - if calling from abroad, on +27 11 602 2093 (only between 8h00 and 16h30 South African time);
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS branch office, preferably after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

Comments on this guide may be e-mailed to **C&E_LegislativeComments@sars.gov.za**.

Legislative Policy: Customs and Excise
SOUTH AFRICAN REVENUE SERVICE
8 February 2023

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1. Purpose

This guide aims to provide you with information to assist you in determining your customs duty implications on imported dutiable goods. It excludes “excisable goods” specified in Part 2 of Schedule 1 imported into or manufactured in the Republic and goods imported through the post and by travellers.

2. Introduction

One of the key objectives of the Customs and Excise Act 91 of 1964 (the Act) is to levy customs duty and to ensure that the correct amount of customs duty on imported dutiable goods is paid when due.

Your customs duty implications on imported dutiable goods is determined by the tariff classification,¹ valuation,² origin³ of the goods and if the value of the goods is expressed in foreign currency by the rate of exchange used for conversion of foreign currency to the rand.⁴

The tariff classification code under which the goods are classified will determine the rate of duty payable. The “customs value of imported goods” means the value of goods for the purposes of levying ad valorem duties of customs on imported goods. *Ad valorem* duties represent a percentage of the customs value. The primary basis for customs valuation is the “transaction value”, that is, the price actually paid or payable by the buyer for the imported goods. The origin of the goods will determine whether the goods qualify for a preferential rate of duty in accordance with trade agreements. The conversion of foreign currency to the rand is determined in accordance with section 73 of the Act.

The concepts “due entry”, “home consumption” and “entry for home consumption” under the Act further determine the time of entry, the rate of duty and the duty payable. These concepts are expanded on in this guide.

Evading payment of the correct amount of customs duty harms the economic and fiscal interests of the state and can result in unfair competition. The state thus also has an interest in ensuring any procedure that allows duty not to be payable has been duly complied with. As examples goods may be entered under rebate of duty or transit and if the procedure is not complied with duty will be payable.

The onus rests on the person entering goods to assess duty liability, enter the goods correctly and pay the correct duty due. Failure to do so may result in additional costs such as detention costs, additional duties and value-added tax (VAT), penalties and in some cases, forfeiture or seizure of the goods. In serious cases involving false declaration, fraud or misrepresentation or nondisclosure of any material facts, offenders may be liable to criminal prosecution.

¹ For more information, see the *Tariff Classification – External Policy – SC-CR-A-09* on the **SARS website**.

² For more information, see the *Valuation of Imports – External Directive – SC-CR-A-03* and *Method 1 Valuation of Imports – External Directive – SC-CR-A-05* on the **SARS website**.

³ For more information see the *Administration of Trade Agreements – External Policy SC-RO-02* on the **SARS website**.

⁴ For more information, see the *Valuation of Imports – External Directive – SC-CR-A-03* on the **SARS website**.

3. Customs and Excise Act, 1964

The following table refers to the **key provisions** in the Act that are relevant. This table is not exhaustive and other provisions in the Act may also find application.

| Customs and Excise Act, 1964 | |
|-------------------------------------|---|
| Section | |
| 1 | Definitions of “bill of entry”, “customs duty”, “duty”, “entry for home consumption” and “home consumption” |
| 18 | Removal of goods in bond |
| 18A | Exportation of goods from customs and excise warehouse |
| 20 | Goods in customs and excise warehouses |
| 38 | Entry of goods and time of entry |
| 39 | Importer and exporter to produce documents and pay duties |
| 40 | Validity of entries |
| 45 | Determination of duty applicable |
| 47 | Payment of duty and rate of duty applicable |
| 47A | Prohibition of certain acts in respect of goods not duly entered |
| 53 | Imposition of antidumping duties |
| 56A | Imposition of countervailing duties |
| 73 | Currency conversion |
| 75 | Specific rebates, drawbacks and refunds of duty |
| 88 | Seizure |
| 105 | Interest on outstanding amounts |

| Schedules to the Act | |
|-----------------------------|---|
| Schedule | |
| 1 | <p>Schedule 1 consists of the following parts:</p> <p>Part 1 Ordinary Customs Duty</p> <p>Part 2A Specific Excise Duties on locally manufactured or on imported goods of the same class or kind</p> <p>Part 2B <i>Ad Valorem Excise</i> Duties on locally manufactured goods or on imported goods of the same class or kind</p> <p>Part 3 Environmental Levy</p> <p>Part 3A Environmental Levy on Plastic Bags</p> <p>Part 3B Environmental Levy on Electricity Generated in the Republic</p> <p>Part 3C Environmental Levy on Electric Filament Lamps</p> <p>Part 3D Environmental Levy on Carbon Dioxide (CO₂) Emissions of Motor Vehicles</p> <p>Part 3E Environmental Levy on Tyres</p> <p>Part 3F Environmental Levy on Carbon Emissions</p> <p>Part 5A Fuel Levy</p> <p>Part 5B Road Accident Fund Levy</p> <p>Part 6 Export Duty on Scrap Metal</p> <p>Part 7 Health Promotion Levy</p> <p>Part 7A Levy on Sugary Beverages</p> <p>Part 8 Ordinary Levy</p> |
| 2 | Anti-dumping, Countervailing and Safeguard Duties on Imported Goods |
| 3 | Industrial Rebates of Customs duties |
| 4 | General Rebates of Customs Duties and Fuel Levy |

The Act, Schedules to the Act and Rules are available on the **SARS website** under Legal Counsel ⇒ Primary Legislation and Secondary Legislation.

4. What constitutes “due entry”?

The concept “due entry” plays a key role in determining the time of entry, the rate of duty and the duty payable.

When commercial goods are imported into South Africa they must be cleared through customs. Clearance of commercial goods through customs is made on a bill of entry (that is, an SAD form). In order for any entry for imported goods to be considered to meet the test for due entry the provisions of section 39 read with section 40(1) and 40(2)⁵ must be met.

Due entry will include any entry made under the Act including entry for –

- home consumption;
- removal in bond;
- warehousing; and
- rebate (Schedules 3 and 4).

5. What is “home consumption”?

Section 1 defines “home consumption” to mean consumption or use in the Republic.

Imported goods intended to be consumed or used in South Africa will be regarded as home consumption goods. The following examples show when imported goods will be regarded to be consumed or used in South Africa:

“Imported goods—

- entered for home consumption;
- removed, taken or delivered from customs control without due entry for home consumption;
- smuggled;
- entered for transit through South Africa to another country but diverted into South Africa;
- stored in a licensed customs and excise storage warehouse but diverted into South Africa; and
- stored in a licensed customs and excise storage warehouse for export but diverted into South Africa.”

⁵ Further information on the validity of import entries can be found in the guide titled *Validity of Import Entries* available on the **SARS website** under Legal Counsel ⇒ Legal Counsel Publications ⇒ Find a Guide ⇒ Customs and Excise.

6. What is “entry for home consumption”?

A bill of entry entering any goods duty paid or out of a customs and excise warehouse for consumption or use in the Republic will be an entry for home consumption.

Section 1 defines “entry for home consumption” to include entry under any item in Schedule 3, 4 or 6. As a result, entry for home consumption will also include a bill of entry entering goods for the purposes under any item of Schedule 3, 4 or 6.

Schedule 3 provides for industrial rebates of customs duties. Under section 75(2)(a) a rebate of duty on any goods described in Schedule 3 may be allowed only on goods entered for use in the production or manufacture of goods in the industry and for the purpose specified in the item of Schedule 3 for those goods.

Schedule 4 provides for general rebates of customs duties and fuel levy. Rebates of customs duties leviable under Parts 1 and 2 of Schedule 1 on imported goods are rebated to the extent stated in the items in Schedule 4 for those goods.

The trade policy objectives underlying Schedules 3 and 4 aim to stimulate and promote local manufacturing, industrial development, economic growth, employment and exports by providing South African enterprises full or partial relief of duty on imported goods used in the industries prescribed in the Schedules.

Schedule 6 covers, rebates and refunds of excise duties, fuel levy, road accident fund levy and environmental levy and is excluded for the purposes of this guide.

7. When is duty payable?

Section 47(1) states that duty shall be paid for the benefit of the National Revenue Fund on all imported goods in accordance with the provisions of Schedule 1 at the time of entry for home consumption of such goods. This requirement is reinforced by section 39(1)(b).

Duty is thus payable when the goods are entered for home consumption, but payment may be deferred⁶ under the proviso to section 39(1)(b).

8. How is the rate of duty determined?

The tariff classification code under which the goods are classified will determine the rate of duty applicable at the time of entry for home consumption. The time of entry for home consumption under section 45(2) is the time when the bill of entry is submitted.

Under section 55(2)(b), an antidumping duty or countervailing duty or safeguard duty may be imposed from the date a provisional payment is imposed on the goods concerned.

⁶ Further guidance on deferment is available in External Policy SC-DT-B-02, which is available on the **SARS website**.

9. Circumstances when duty is payable on goods entered for any purpose which does not require duty to be paid

Entry may be made for imported goods for a purpose which does not require duty to be paid or full duty to be paid subject to fulfilment of any condition, for example –

- entry in respect of removal in bond under section 18;
- export of goods from a customs and excise warehouse under section 18A; and
- qualified use under any item of Schedule 3 or 4 under section 75.

Sections 18, 18A and 75 require that the goods must be duly removed, exported or used as declared on the relevant bill of entry and as required by the sections or the items of Schedules concerned otherwise the duty is payable.

10. What is the rate of duty on goods entered under rebate of duty if duty becomes payable?

The definition of “entry for home consumption” includes entry under any item in Schedule 3, 4 or 6.

Since the time of entry for home consumption generally determines the rate of duty applicable, the time of such entry, if due entry was made, will also determine the rate of duty applicable if duty becomes payable on goods entered under rebate of duty under Schedule 3, including imported goods temporarily admitted under rebate of duty such as items 470.03, 480.00 and 490.00 of Schedule 4.

If for example you entered goods under rebate of duty under Schedule 3 and you no longer require those goods to be used under the provisions of the rebate item the rate of duty applicable will be the rate when you entered the goods for home consumption.

11. What is the rate of duty on goods entered for home consumption out of a customs and excise storage warehouse?

Section 20(4)(a) determines that goods may be removed from a customs and excise storage warehouse upon due entry for home consumption and payment of any duty due on said goods.

The rate of duty will be the rate applicable when due entry for home consumption is made out of the warehouse.

12. How duty is determined when goods are removed, taken or delivered without due entry for home consumption?

If goods are removed, taken or delivered without due entry for home consumption, duties are leviable in accordance with section 45(1)(b), which states that any dutiable goods imported into the Republic and which were removed, taken or delivered without due entry for home consumption having been made on such goods, shall be liable to such duties as may be leviable upon such goods at the time of such removal, taking or delivery or at the time of assessment by an officer, whichever yields the greater amount of duty.

Therefore, for example, if during a post-clearance audit, the assessment reveals that –

- on import you made an entry for home consumption and the entry was not valid in accordance with sections 39, 40(1) and 40(2) because the incorrect tariff, value or origin was declared;
- you entered goods under rebate of duty and the goods were not used in accordance with the provisions of the rebate item under which they were entered; or
- removed goods from a customs and excise storage warehouse and the goods were diverted to a place not declared on the entry

Customs can assess the duties at the rate of duty at the time of removal, taking or delivery or at the time the auditor made the assessment, whichever yields the greater amount of duty.

Such an audit may result in liability for additional duties, VAT, penalties and, if applicable, seizure or forfeiture of the goods.

13. What should I do if I cannot prove that my liability for duty has ceased for goods entered for removal in bond?

If you cannot prove that your liability for duty has ceased in accordance with section 18, you are required to notify the Commissioner immediately and submit payment of duty and VAT payable under the Value-Added Tax Act, 1991, (VAT Act) together with such notification as if the goods were entered for home consumption on the date of entry for removal in bond.

Payment will not indemnify you against any fine or penalty provided for in the Act.

14. What are the implications if I do not notify the Commissioner or if the goods entered for removal in bond or entered for export out of a customs and excise warehouse are diverted?

If your liability has not ceased and you do not notify the Commissioner and pay the duty and VAT, or if the goods entered for removal in bond or entered for export out of a customs and excise warehouse have been diverted or deemed to have been diverted as contemplated in section 18(13), you shall, upon demand be required to pay –

- the duty and VAT due under the VAT Act, as if the goods were entered for home consumption on the date of entry for removal in bond;
- any amount that may be due under section 88(2) for goods subject to forfeiture that cannot be found;
- any interest due under section 105; and
- in certain circumstances, offenders may be liable to criminal prosecution.

15. What should I do if I cannot prove that my liability for duty has ceased for goods entered for export from a customs and excise warehouse?

If you cannot prove that your liability for duty has ceased in accordance with section 18A, you are required to notify the Commissioner immediately and submit payment of duty and VAT payable under the VAT Act, together with such notification as if the goods were entered for home consumption on the date of entry for export.