

DRAFT FOR PUBLIC COMMENT

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SOUTH AFRICAN REVENUE SERVICE

No. R.

2021

CUSTOMS AND EXCISE ACT, 1964

AMENDMENT OF RULES

Under sections 64E 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.

EDWARD CHRISTIAN KIESWETTER

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Replacement of rules under section 64E of Act 91 of 1964

1. The rules made under section 64E of the Customs and Excise Act are hereby repealed in its entirety and replaced by the following rules:

“RULES FOR SECTION 64E

ACCREDITATION OF CLIENTS

Part 1: General

Definitions

64E.01 In these rules, unless the context otherwise indicates –

“**Accreditation Agreement**” means an agreement in accordance with the contents of the pro forma agreement prescribed in terms of rule **64E.16**;

“**Accreditation Committee**” means a committee established in terms of rule **64E.03**;

“**Accreditation Competency Assessment Certificate**” means a certificate issued by the Commissioner in terms of rule **64E.06**;

“**applicant**” means a person that has submitted an application, but excludes a person submitting an application on behalf of another person;

“**application**” means an application for accreditation in terms of rule **64E.05** and includes any application for renewal;

“**Client Relationship Manager**” means an officer or other person to whom the facilitation of the relationship between the Commissioner and the holder of accredited client status has been delegated as contemplated in rule **64E.02(c)**;

“**competency assessment**” means a competency assessment referred to in rule **64E.06**;

“**customs activity**” means an activity regulated by the Act and involving the import or export of goods, the handling, transit, conveyance, storage and processing of imported goods or goods to be exported which are subject to customs control;

“**located in the Republic**” in relation to –

- (a) a natural person, means that such person is ordinarily resident in the Republic at a specific physical address in the Republic; and
- (b) a juristic person, means that such person –
 - (i) is incorporated, registered or recognised in terms of the laws of the Republic or of another country; and

- (ii) has a place of business at a specific physical address in the Republic;

“**person**” includes a juristic entity; and

“**these rules**” means the rules under section 64E.

Delegation

64E.02 (1) The powers and functions mentioned below are for purposes of section 64E(2)(d) delegated as follows:

- (a) The conducting of investigations contemplated in section 64E(2)(a) read with rule **64E.07**, to the officer responsible for post clearance audit;
- (b) the consideration and approval or refusal of applications, and the cancellation or suspension of accredited client status as contemplated in section 64E(3)(a) and (b), to the Accreditation Committee established in terms of rule **64E.03**;
- (c) the facilitation of the relationship between the Commissioner and the holder of accredited client status, to a Client Relationship Manager; and
- (d) any function or power for purposes of the administration of section 64E other than a power or function referred to in paragraph (a) to (c), and excluding the power to prescribe rules, to an officer.

(2) Additional detail in relation to any delegation referred to in subrule (1) must be set out in writing.

Establishment of Accreditation Committee

64E.03 (1) An Accreditation Committee is hereby established for purposes of the delegated authority contemplated in rule **64E.02(b)**.

- (2) The Accreditation Committee referred to in subrule (1) must consist of –
- (a) a chairperson appointed by the Commissioner; and
 - (b) members with the necessary knowledge and skills to consider and decide matters falling within the authority of the committee, nominated by the Chairperson.

**Part 2: Levels of accredited client status, application process, validity period
and renewal of accredited client status**

Levels of accredited client status and persons who may apply for accreditation

64E.04 (1) For the purposes of section 64E(1)(a)(ii) the levels of accredited client status are –

- (a) Level 1, indicating that the accredited client status conferred on the registrant or licensee is that of “Authorised Economic Operator (Compliance)”, in respect of which the benefits referred to in rule **64E.13** apply to the extent set out in that rule; and
- (b) Level 2, indicating that the accredited client status conferred on the registrant or licensee is that of “Authorised Economic Operator (Security)”, in respect of which the benefits referred to in rule **64E.14** apply to the extent set out in that rule.

(2) (a) A person registered or licenced for any customs activity under the provisions of the Act that is located in the Republic may, subject to paragraph (b), apply for Level 1 or 2 accredited client status in terms of rule **64E.05**.

(b) A registered agent acting for a registrant or licensee that is not located in the Republic may not apply for accredited client status.

Applications for accredited client status

64E.05 (1) Application for accredited client status must be made on form DA 186 as published on the SARS website, submitted –

- (a) at any Customs and Excise Office where a Client Relationship Manager is located, as indicated on the SARS website; or
- (b) by e-mail directed to the e-mail address indicated on the SARS website for receipt of such applications.

(2) An application referred to in subrule (1) must be supported by –

- (a) a Customs Accreditation Self-Evaluation Questionnaire available on the SARS website and completed in accordance with any instructions provided on the website in this regard;

- (b) a Systems Questionnaire available on the SARS website and completed in accordance with any instructions provided on the website in this regard;
- (c) a completed Accreditation Agreement; and
- (d) any other supporting documents that may be necessary for proving compliance with the criteria prescribed in rule **64E.11** or **64E.12** for the relevant level of accredited client status, as may be required by the Commissioner or as indicated on the application form.

Competency assessment to be passed to establish sufficient knowledge

64E.06 (1) An applicant must in accordance with this rule establish sufficient knowledge of customs laws and procedures as contemplated in section 64E(1)(b)(iv).

(2) (a) An applicant must, subject to paragraph (b), apply for a competency assessment on a form published on the SARS website for this purpose, submitted –

- (i) at any Customs and Excise Office where a Client Relationship Manager is located, as indicated on the SARS website; or
- (ii) by e-mail directed to the e-mail address indicated on the SARS website for receipt of such applications.

(b) Application to take the competency assessment may be made in respect of –

- (i) the applicant personally; or
- (ii) a person or a number of persons in the employ of the applicant and nominated by the applicant as persons who will administer accredited client requirements as contemplated in section 64E(1)(b)(iv).

(3) An Accreditation Competency Assessment Certificate –

- (a) is issued in the name of the person who took the assessment if a score of at least 70 per cent is achieved; and
- (b) remains valid for three years from date of issue.

Investigations to verify statements in applications

64E.07 (a) For the purposes of an investigation contemplated in section 64E(2)(a), the applicant must make available any books, accounts and other documents and furnish fully the information as may be required by the Commissioner.

(b) An investigation referred to in paragraph (a) may include books, accounts or other documents or information for a period of up to five years prior to the date of application for accredited client status, depending on the level of accredited client status applied for.

Approval of applications subject to conditions

64E.08 (1) An application may be approved subject to –

- (a) the general conditions referred to in subrule (2) as well as any other general conditions included in the Accreditation Agreement; and
- (b) any specific conditions that may be determined by the Commissioner in respect of the specific accredited client status issued.

(2) Approval of applications for accredited client status is subject to the following general conditions:

- (a) The holder of the accredited client status must remain compliant with the criteria prescribed for the particular level of accredited client status as referred to in rule **64E.11** or **64E.12** respectively;
- (b) if the holder of the accredited client status is no longer compliant with any of the criteria contemplated in paragraph (a) or if any of the information provided by the holder on the application form has subsequently changed, such holder must promptly notify the Commissioner of the non-compliance or change by submitting in terms of rule **64E.05** application Form DA 186 and the required supporting documents reflecting the relevant details in respect of the non-compliance or change; and
- (c) the holder of the accredited client status may not without the prior permission of the Commissioner make any change in respect of his or her computer system referred to in rule **64E.11(1)(b)** involving –
 - (i) utilising a different computer system;
 - (ii) changing from using its own computer system to using that of a third party;
 - (iii) changing from using a third party computer system to using his or her

- own computer system; or
- (iv) contracting the services of an intermediary or a duly authorised agent to conduct customs and excise related business with the Commissioner within the provisions of this Act.

Validity of accredited client status

64E.09 (1) Accredited client status –

- (a) takes effect on the date specified in the status; and
- (b) remains valid for a period of five years.

(2) An accredited client status lapses before its expiry in terms of subrule (1)(b) if –

- (a) the status is cancelled by the Commissioner as contemplated in section 64E(3);
- (b) the status holder's registration or licence is suspended or cancelled in terms of section 60(2); or
- (c) the status holder no longer intends to retain the status, and notifies the Commissioner of such intention.

Renewal of accredited client status

64E.10 (1) The holder of an accredited client status may not later than 30 calendar days before expiry of the status in terms of rule **64E.09**(1)(b) apply for renewal of the status.

(2) All the provisions applicable to an application in these rules apply with the necessary changes for purposes of an application for renewal of accredited client status.

(3) If consideration of an application for renewal of accredited client status is not finalised before the expiry of the status, the Commissioner may extend the validity period of the status until the renewal application is finalised.

Part 3: Criteria for levels of accredited client status

Criteria for Level 1 accredited client status (AEO Compliance)

- 64E.11** (1) An applicant for Level 1 accredited client status must for purposes of –
- (a) section 64E(1)(b)(i) and (vi), subject to subrule 2, have a record of compliance with this Act for 3 years preceding the date of application, as evidenced by an absence of –
 - (i) a contravention of sections 80 to 84 and 86 of this Act that resulted in the imposition of any administrative penalty; or
 - (ii) any suspension or cancellation of a registration or a licence, or a deferment benefit granted to the applicant in terms of this Act;
 - (b) section 64E(1)(b)(ii) and (iii), have and maintain –
 - (i) a computer system conforming to any conditions specified in the user agreement referred to in section 101A;
 - (ii) an effective internal accounting, record keeping and operational system which is consistent with generally accepted accounting principles, and which must—
 - (aa) reflect a full audit trail of all the applicant’s customs transactions and activities; and
 - (bb) have verifiable procedures for backup, recovery, fallback, archiving and retrieval of business records; and
 - (iii) internal controls for detecting illegal or irregular transactions and activities;
 - (c) section 64E(1)(b)(iv), have sufficient knowledge of customs and excise laws and procedures to implement and maintain an effective accredited client status compliance system, as evidenced by an Accreditation Competency Assessment Certificate issued in terms of rule **64E.06**;
 - (d) section 64E(1)(b)(v), have sufficient financial resources, as evidenced by –
 - (i) audited financial statements of the business for the past three financial years or such lesser period as the Commissioner may allow in a specific case; or
 - (ii) where no such statements are available, other evidence of the financial viability of the business which may include proof of available financial resources as the Commissioner may allow; and
 - (e) section 64E(1)(b)(vi), have no –
 - (i) outstanding –

- (aa) taxes, interest, penalties or other amounts due and payable to SARS for which he or she is liable in terms of this Act or any other tax law; or
 - (bb) tax returns or other documents that must be submitted for tax purposes to SARS in terms of this Act or any other tax law; or
- (ii) conviction for any offence in terms of this Act or any other tax law.

(2) The Commissioner may, despite subrule (1)(a), assess an applicant's record of compliance with customs requirements on the basis of any records and information available to it at the time of application, if a three year compliance record referred to in subrule (1)(a) is not available due to the applicant's limited exposure to the South African customs and excise environment.

Criteria for Level 2 accredited client status (AEO Security)

64E.12 (1) The criteria referred to in paragraphs (a) to (e) of rule **64E.11** apply for purposes of an applicant for Level 2 accredited client status: Provided that the record of compliance contemplated in rule 64E.08(1)(a) is five years in respect of applicants for Level 2 accredited client status.

(2) An applicant for Level 2 accredited client status must, in addition to compliance with the criteria contemplated in subrule (1), for purposes of section 64E(1)(b)(vi), meet the following safety and security standards:

- (a) The applicant must implement adequate and appropriate security measures to secure premises, buildings and facilities, including prohibiting unauthorised access to security sensitive areas by any person or of any vehicle or goods by means of access control or other appropriate security precautions;
- (b) security measures must be in place in respect of personnel and other persons gaining access to the applicant's premises providing for –
 - (i) the unique identification of an individual as a member of the applicant's personnel to mitigate the risk of unauthorised persons gaining access to secure areas;
 - (ii) security screening in respect of prospective employees applying for posts which entail working in security sensitive areas;

- (iii) periodic security screening of current employees working in security sensitive areas; and
 - (iv) the identification, recording and dealing with unauthorised or unidentified persons, such as photo identification and sign-in registers for visitors at all entry points to the premises;
- (c) the applicant must identify his or her business partners and must be able to demonstrate that efforts were made to ensure that business partners meet or enhance supply chain security requirements through –
 - (i) the review of relevant commercial information relating to prospective contracting parties before entering into contractual arrangements; and
 - (i) the implementation of appropriate contractual arrangements or other measures appropriate for the applicant's business model;
- (d) measures must be in place to ensure that the security and integrity of cargo and any conveyance is maintained whilst under the applicant's supervision or control, including procedures for –
 - (i) storing of, access to and removal of, cargo and conveyances in secure areas;
 - (ii) proper sealing by designated personnel;
 - (iii) training of operators of conveyances used for the transportation of cargo to ensure the security of conveyances and the cargo at all times;
 - (iii) inspection of conveyances and recognizing and reporting compromised seals, cargo and conveyances, as well as keeping record of inspections; and
 - (iv) ensuring that cargo is secure during transport and whilst loading or unloading from a conveyance;
- (e) the applicant must have a contingency plan for crisis management and recovery procedures to mitigate any risk of loss or destruction of the applicant's records and information;
- (f) regularly reviewed measures must be in place for the education and training of personnel with regard to the risks associated with the international supply chain, the recognition of suspicious incidents and potential threats and actions to be taken in response to it;
- (g) adequate information technology security measures must be employed to protect the applicant's information technology systems, evidenced by –

- (i) a dedicated person responsible for managing information technology and information technology security;
- (ii) written information technology security procedures or confirmation of the implementation of information security measures;
- (iii) employee training in respect of information technology security policies, procedures and standards;
- (iv) monitoring systems to identify improper access to information technology, tampering with or the altering of business data, as well as procedures to deal with any breaches of security by personnel or other persons;
- (v) measures providing for –
 - (aa) accessing of information technology systems by personnel through individually assigned accounts;
 - (bb) limiting access to master data and the creation of user profiles providing access to information connected to the specific tasks of the user; and
 - (cc) periodic change of passwords;
- (vi) security features incorporated into information security systems, such as firewalls, spyware, encryption, monitoring of software; and
- (vii) the physical securing of the applicant's information technology server room, including authorised access control;
- (h) the applicant must at all times have dedicated personnel with an understanding of its business and access to the relevant information tasked with consultation, co-operation and communication with SARS in relation to customs matters; and
- (i) the applicant must practice good corporate governance and be able to show compliance with the guidelines contained in the latest revision of the King Report on Corporate Governance.

Part 4: Benefits for levels of accredited client status

Benefits for Level 1 accredited client status (AEO Compliance)

64E.13 The holder of Level 1 accredited client status is entitled to –

- (a) any one or more of the following benefits as may be determined by the Commissioner generally, for a particular category of clients, or in a particular case:
- (i) The services of a Client Relationship Manager;
 - (ii) reduction of the amount of any security required in terms of the Act;
 - (iii) fewer documentary and physical inspections for compliance risks;
 - (iv) prioritising of requests for tariff and valuation determinations;
 - (v) prioritising access to non-intrusive inspection techniques when goods are stopped or detained for inspection;
 - (vi) prioritising and expediting inspections;
 - (vii) the inspection of goods at the client's premises on appointment, irrespective of the type of goods, and the exemption from payment of a fee for such inspections; and
 - (viii) authorisation to make use, in accordance with an agreement entered into with SARS, of a unique SARS logo identifying the holder recognised by SARS as a person with Authorised Economic Operator status; and
- (b) recognition by the customs authorities of the other Member States of the Southern African Customs Union of the accredited client status issued to the holder –
- (i) to the extent provided for in any mutual recognition arrangement between SARS and such customs authorities; and
 - (ii) provided that consent has been given by the holder on application form DA 186 for the sharing of such information as may be necessary to assure effective and continued mutual recognition.

Benefits for Level 2 accredited client status (AEO Security)

64E.14 The holder of Level 2 accredited client status is entitled –

- (a) in addition to the benefits referred to in rule 64E.13(a), entitled to any one or more of the following further benefits as may be determined by the Commissioner generally, for a particular category of clients, or in a particular case:

- (i) Exemption, on conditions determined by the Commissioner, from customs supervision following application by such holder for special or extra attendance in relation to:
 - (aa) The examination of goods entered on a sight bill of entry;
 - (bb) the unpacking and repacking of goods for export;
 - (cc) the export of goods temporarily imported;
 - (dd) the examination of goods without prejudice; and
 - (ee) the destruction of goods;
- (ii) prioritising applications for special or extra attendance services where such holder is not exempted from supervision as contemplated in subparagraph (i);
- (iii) not imposing any charges for special or extra attendance in respect of applications referred to in paragraph (ii) if the attendance is provided during hours of attendance contemplated in rule 120.01;
- (iv) expedited processing of refund and drawback applications;
- (v) provision of targeted training sessions;
- (vi) provision of trade statistics on a quarterly basis;
- (vii) extension of validity of the relevant license issued to such holder in terms of section 60;
- (viii) reduced cyclical compliance audits for licensees, which will not affect risk based audits or mandatory audits for purposes of maintaining the accredited client status;
- (ix) fewer documentary and physical inspections for compliance and supply chain security risks;
- (x) exemption from security payments; and
- (xi) co-ordination of interventions in respect of such holder's goods by officers and officials from other government agencies –
 - (aa) to the extent provided for in memoranda of understanding between SARS and such agencies; and
 - (bb) provided that consent has been given by the holder on application form DA 186 for the sharing of such information as may be necessary for the facilitation of the co-ordinated intervention; and

- (b) recognition by other customs authorities of the accredited client status issued to the holder –
- (i) to the extent provided for in mutual recognition arrangements between SARS and such customs authorities; and
 - (ii) provided that consent has been given by the holder on application form DA 186 for the sharing of such information as may be necessary to assure effective and continued mutual recognition.

Part 5: Miscellaneous matters

Information sharing for purposes of a mutual recognition

64E.15. Whenever any international agreement or arrangement provides for the mutual recognition of accreditation status conferred by each of the parties in terms of their respective legislation to qualifying traders active within the customs environment of the relevant party, any holder of accredited client status that wishes to benefit from such recognition must consent to the sharing of such information as may be necessary to ensure the effective and continued administration of the mutual recognition by the party with whom the information is shared.

Accreditation Agreement

64E.16. An Accreditation Agreement referred to in rule **64E.05(2)(d)** must conform to the content of the pro forma agreement below:

“ACCREDITATION OF CLIENTS

PRO FORMA AGREEMENT – RULE

**Between the Commissioner of the South African Revenue Service and
an accredited client under section 64E(2)(b) of the Customs and Excise Act,
1964 (Act 91 of 1964)**

Please note that the agreement is still to be updated in accordance with the new rules.

Part 6: Transitional matters

Transitional provisions relating to accredited client status granted before effective date of these rules

64E.17 (1) For purposes of this rule “effective date” means the date on which these rules come into effect.

(2) (a) Any Level 1 accredited client status granted before the effective date lapses on the effective date.

(b) Despite paragraph (a), the following provisions will continue unaffected in respect of persons that had Level 1 accredited client status immediately before the effective date:

- (i) Section 21(3)(c); and
- (ii) rule 49.04(a) read with (c)(ii) in respect of the exemption from submitting proof of origin and any supporting documents in terms of that rule.

(3) Any Level 2 accredited client status granted before the effective date must from the effective date be regarded to be a Level 1 accredited client status as contemplated in rule **64E.04(1)(a)**.”

Commencement

2. These rules come into effect on

Please note that amendments to Form DA 186 and DA 55 will be published for comment at a later stage.