

8/5/2002/30

CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES (NO. DAR/40)

Under section 64E and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R1874 of 8 December 1995 are amended to the extent set out in the Schedule hereto.

P J GORDHAN
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

(a) By the insertion after the rules for section 64D of the following rules:

"RULES FOR SECTION 64E

Accreditation of clients

64E.00 Numbering and application of other provisions

- (a) The number reflected after the rule number refers to the subsection to which the rule relates.
- (b) The provisions of, and the rules for, sections 59A, 60, 61, 64, 64A, 64B, and 64D, including the definitions in these rules and any other provision relating to registration or licensing shall, where applicable, apply *mutatis mutandis* to the activities of an accredited client.

64E.01(1, 2) Persons who may apply for accreditation and application for accredited client status

Only

- (a) a person registered under the provisions of this Act as an-
 - (i) exporter; or
 - (ii) importer; or
- (b) a person licensed under the provisions of the Act as a-
 - (i) clearing agent; or
 - (ii) remover of goods in bond; or
- (iii) a licensee of a customs and excise warehouse

may apply for accredited client status.

(b) Application for accredited client status must be made on prescribed form DA 186 which must be supported by-

- (i) the documents required in terms of the application form; and
- (ii) a completed agreement in accordance with the contents of the pro-forma agreement prescribed in this rule.

64E.02(1, 2) Criteria for accreditation: Appropriate record of compliance, computer system and operational processes, sufficient knowledge and sufficient financial resources

(a) To be eligible for accreditation, an applicant may be required to—

Appropriate record of compliance

(i) prove an appropriate record of compliance with customs and excise laws and procedures for purposes of section 64E(1)(b)(i) which shall include—

(aa) that complete records are kept as prescribed by the rules for sections 59A, 60, 61, 64, 64B, or 64D as the case may be according to the nature of activity, which records must, where appropriate, include queries raised and settled, stop notes raised and settled and penalties imposed, confirmed or mitigated;

(bb) evidence of effective administrative measures instituted and maintained to ensure compliance with customs and excise laws and procedures;

(cc) complete banking account records regarding each transaction in connection with goods and persons to which the provisions of the Act relate,

for a period of 5 years immediately preceding the application or such lesser period as the Commissioner may allow;

Computer system and operational procedures and processes

- (ii) demonstrate that his or her
 - (aa) computer systems, if applicable; and
 - (bb) internal operational procedures and processes,will ensure compliance.

Sufficient knowledge

- (iii) prove that the person who will administer the accredited client requirements has sufficient knowledge of customs and excise laws and procedures to implement and maintain an efficient and effective accredited client compliance system in accordance with such laws and procedures as contemplated in the rules for section 59A, 60 or 64B;

Sufficient financial resources

- (iv) produce evidence of sufficient financial resources in which respect every applicant shall –
 - aa) provide the audited financial statements of the business for the past 2 financial years or such lesser period as the Commissioner may allow;
 - bb) where no such statements are available, provide sufficient evidence to prove the viability of the business which may include proof of available financial resources of whatever nature.
- (b) Rules regarding an effective computer system referred to in section 64E(1)(b)(iii) will be published when section 101A comes into operation.

64E.03(2) Investigation necessary to verify statements in application

- (a) Investigations necessary to verify any statement in an application may include enquiries-

- (i) concerning sufficiency of financial resources for the conduct of customs and excise business in relation to other business activities;
 - (ii) into and inspection of documents under the control of the Commissioner or of the applicant or any principal or agent of the applicant concerning the customs and excise transactions of the applicant;
 - (iii) concerning any other matter related to the application.
- (b) For the purposes of conducting any investigation contemplated in section 2(a), any audit or inspection of the books, accounts, other documents or other records of any applicant for accredited client status shall be for a period of two calendar years prior to the date the audit or inspection commenced.

64E.04(2) Deferment

Existing deferment for payment of duty or value-added tax agreements shall remain in force when any registrant or licensee attains accredited client status.

64E.05(3) Prior permission of the Commissioner required when the computer system of client changes

For the purposes of these rules, an accredited client must, notwithstanding the terms and conditions of the user agreement which may be entered into by and between client and the Commissioner under section 101A, obtain the prior permission of the Commissioner, whenever, any change in the computer system operated by client occurs which will result in the—

- a) client utilising a different computer system;
- b) client changing from using its own computer system to using that of another third party;
- c) client changing from using another third party computer system to using its own computer system; or
- d) client contracting the services of an intermediary or a duly authorised agent to conduct customs and excise related business with the Commissioner within the terms and conditions of any agreement and the provisions of the Act and the rules.

64E 08(3) Cancellation or suspension of accredited client status

The provisions of section 64E(3) and the provisions of section 60(2) apply *mutatis mutandis* to the refusal, cancellation or suspension of accredited client status.

64E.09(3) Agreement

- (a) a pro forma agreement is specified in, and forms part of, this rule.
- (b) Any expression in the pro forma agreement shall, unless the context otherwise indicates, have the meaning assigned thereto in the Act as defined in the rules for section 60 or in these rules.

ACCREDITATION OF CLIENTS -

PRO FORMA AGREEMENT - Rule 64E.09(3)

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 No. 91 of 1964)

Whereas

(full name of Accredited Client - hereinafter referred to as client)

(physical address of client - not a P O Box)

herein represented by

Full name

Capacity

*duly authorised thereto by virtue of a resolution of _____

(a) *a resolution passed at a meeting of the Board of Directors

held at _____ on _____ day of _____; or

(b) *express consent in writing of all the partners of a partnership /members of the
close corporation /*trustees of the trust

held at _____ on _____ day of _____; or

held at _____ on _____

hereinafter referred to as client

has applied for accreditation status; and -

whereas the Commissioner has considered the application and decided to approve the applicant as an accredited
client subject to compliance with all the terms and conditions of this agreement, it is agreed that the client shall be
bound by the following:

Client acknowledges as a precondition to being allowed to engage in the activities regulated by the Act and for which accreditation is granted that –

- a) it understands its rights to conduct business as an accredited client are subject to compliance with customs and excise laws and procedures and any standards imposed by the Commissioner; and
 - b) is aware of the civil and criminal regulatory consequences of non-compliance with such laws and procedures and standards and the provisions of this agreement.
- 2) (a) Client is aware of and acknowledges the statutory powers, rights and obligations of the Commissioner and his delegated officers to inspect the books and records of the business in respect of which accreditation status was granted including such records relating also to individual clients or specific transactions conducted for any principal as well as the banking accounts and records in so far as it relates to the business conducted under the accredited scheme.
- (b) Client hereby agrees to and authorises the inspection of such books and documents and business banking accounts whenever reasonably required for purposes of the Act by the Commissioner.
- 3) (a) Client is aware of its obligation to advise, and undertakes to advise, the Commissioner as required by the provisions of the rules for section 59A or 60, as the case may be, whenever client or any employee of client-
- (i) has contravened or failed to comply with the provisions of the Act; or
 - (ii) has failed to comply with any condition or requirement of this agreement; or
 - (iii) is convicted of any offence under the Act; or
 - (iv) is convicted of any offence involving dishonesty;

and client acknowledges the right of the Commissioner to cancel or suspend the accredited client status in accordance with the provisions of section 64E.

- (b) Whenever any bill of entry or other prescribed document presented for any purpose under the Act or these rules does not in every respect comply with the provisions of the Act and these

rules, client undertakes to forthwith adjust such bill of entry or other document as prescribed and to maintain a written record of -

- (i) how the relevant errors occurred;
- (ii) what action was taken to correct the errors; and
- (iii) what actions were taken to prevent future occurrences of such errors.

(c) Notwithstanding the terms and conditions of the user agreement which may be entered into by and between client and the Commissioner under section 101A, client undertakes to obtain the prior permission of the Commissioner, whenever, any change in the computer system operated by client occurs which will result in the—

- (i) client utilising a different computer system;
- (ii) client changing from using its own computer system to using that of another third party;
- (iii) client changing from using another third party computer system to using its own computer system; or
- (iv) client contracting the services of an intermediary or a duly authorised agent to conduct customs and excise related business with the Commissioner within the terms and conditions of any agreement and the provisions of the Act and the rules.

4) (a) Client undertakes to maintain instituted administrative measures and wherever possible to improve such measures so as to ensure that standards of conduct are maintained and improved upon, in that -

- (i) the contents of all documentation submitted for any purpose under the Act comply in every respect with the requirements of the Act;
- (ii) such documentation are duly and properly verified against all other relevant documentation; and
- (iii) each and every supporting document, which client's accredited status might allow him not to submit with any prescribed bill of entry or other document, is properly kept and available for audit or inspection by the Commissioner as prescribed, and agreed to herein.

- (b) An inspection period against which standards of conduct for purposes of compliance with the terms and conditions of this agreement will be tested is two calendar years prior to the date the inspection commenced.
 - (c) It is a specific term of this agreement that whenever client discovers that any bill of entry or other prescribed document processed by client does not in every respect comply with the provisions of the Act and client adjusts such bill of entry or other document, forthwith and without the intervention of the Commissioner, a Controller or any officer during any audit or inspection, no error will be measured for purposes of determining compliance with the prescribed standards of conduct.
 - (d) Client specifically agrees that no changes in the administration of transacting business under the Act will be implemented without the prior written approval of the Commissioner.
- (5) Client acknowledges that the accredited status under the Act and this agreement shall lapse and be cancelled if client is no longer registered or licensed under any provision of the Act and undertakes to advise the Commissioner forthwith of the occurrence of such fact.
- (6) Client in addition undertakes to-
- (a) keep on the business premises, all books, accounts, documents, data and other records relating to the transactions of the business as prescribed in section 10J of the Act and in the rules;
 - (b) notwithstanding any other provision in the Act or the rules, keep such books, accounts, documents, data and other records available for inspection by the Commissioner for a period of five years calculated from the end of the calendar year in which the specific document was created lodged or required, or any goods were placed under any procedure, for the purposes of the Act;
 - (c) answer any questions of the Commissioner or an officer relating to its business or that of its principal which is required to be answered for purposes of the Act;

(d) comply diligently with the conditions and obligations contained in any other agreement between client and the Commissioner;

(e) ensure that-

(i) the contents of all documents submitted to the Commissioner or a Controller for purposes of the Act are duly verified and completed, in accordance with the instructions of its principal and complies with the provisions of the Act;

(ii) every person in the employ of the client and engaged in the business of the client is conversant with the Act, its rules and procedures and with the requirements relating to the business of the client and the office of the Commissioner and is able to answer any question that may be required to be answered for purposes of the Act;

(iii) the Commissioner is advised as soon as it may come to the knowledge of the client, or any person in the employ of the client, that any principal of the client has failed to comply with the provisions of the Act and of any steps the client took to prevent such non-compliance.

(7) Approval as an accredited client does not exempt client from complying with the provisions of the Customs and Excise Act and rules and continued accreditation requires due observance of such provisions.

(8) (a) The client chooses *domicilium citandi et executandi* at:

(b) The Commissioner chooses *domicilium citandi et executandi* at:

Thus done and signed at _____ on this _____

Licensee

Witness

Thus done and signed at _____ on this _____

for and on behalf of Commissioner for
the South African Revenue Service"

Witness

(b) by the insertion of form DA 186 under item 202.00 of the Schedule to the rules.



SOUTH AFRICAN REVENUE SERVICE

APPLICATION FOR CUSTOMS AND EXCISE ACCREDITED CLIENT STATUS	DA 186
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FOR OFFICIAL USE ONLY			
Application number:		Date received:	
Client type:		File reference:	

A. APPLICANT PARTICULARS			
1.	Registered name:		
2.	State current Customs code:		
3.	Please express your compliance in respect of record keeping as contemplated in rule 59A.09(2) or rule 60.07(2).		%
4.	Please express your internal procedures that are documented as a percentage.		%
5.	What percentage of these internal documented procedures are utilised by your staff.		%
6.	What percentage of your internal processes are computerised.		%
7.	What percentage of your staff, involved in customs transactions, has sufficient knowledge of the Customs and Excise Act and procedures as contemplated in rule 59A.10(2) or rule 60.08(2)(b)?		%
8.	Please indicate the period (years) for which your financial statements are available.	0 - 3	4 - 5
9.	If no financial statements are available, please state what sufficient evidence will be provided to prove the viability of the business, which may include proof of available financial resources of whatever nature		
10.	Please indicate whether you participate in the Deferment Scheme	Yes	No

B. PARTICULARS of CONTACT PERSON											
Initials:			Surname:								
Title:	Prof.	Dr.	Mr.	Me.	E-mail address:						
Telephone Number:					Dialling code:						
Facsimile number:					Dialling Code:						
Postal Address:		Box No:									
		Suburb:									
		City / Town:			Postal Code:						

C. DECLARATION			
I hereby declare that the particulars herein are true and correct.			
Initials and surname:		Status (e.g. Director):	
Signature:	Date:	Place	
Note: If the signatory is not a director, partner or trustee in the business a letter of authority must accompany the application.			