

SOUTH AFRICAN REVENUE SERVICE

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CUSTOMS AND EXCISE ACT, 1964 AMENDMENT OF RULES (DAR/99)

Under sections 59A, 60, 64D, 101A, 119A, 120 and 120A of the Customs and Excise Act, 1964, the rules published in Government Notice R.1874 of 8 December 1995 are amended to the extent set out in the Schedule hereto.

GEORGE NGAKANE VIRGIL MAGASHULA
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

(a) By the insertion after rule 00.06 of the following heading and rule:

“Investigations conducted in respect of applications for registration or licensing

- 00.07 (a) Before deciding whether to approve or refuse any application for registration or licensing the Commissioner may conduct investigations to—
- (i) verify the statements made by the applicant in the application; and
 - (ii) ascertain any facts relating to the activities in respect of which the registration or licence will operate,
- to the extent that the Commissioner may regard as being materially relevant for considering the application.
- (b) The applicant must make available books, accounts and other documents and furnish fully the information necessary to conduct such an investigation.”

- (b) By the insertion in rule 59A.01 (a) after the definition of “customs and excise laws and procedures” of the following definitions:

“foreign principal” means according to the context a registered importer, registered exporter or licensed remover of goods in bond, not located in the Republic;

“located in the Republic” means, in the case of -

- (i) a natural person, a natural person ordinarily resident in the Republic at a specific physical address in the Republic; and
- (ii) a juristic person, a juristic entity –
 - (aa) which is incorporated, registered or recognised in terms of the laws of the Republic or of another country; and
 - (bb) which has a place of business at a specific physical address in the Republic;”

- (c) By the substitution in rule 59A.01 for the definition of “person” of the following definition:

“person” includes –

- (i) any natural person or any insolvent or deceased estate;
- (ii) any juristic person incorporated in the Republic or a juristic person not incorporated in the Republic that has, or any other association of persons whether or not formed in the Republic that has, a place of business at a specific physical address in the Republic;
- (iii) any institution, including any scientific or educational institution, for the benefit of its members or the public that is established in the Republic and has a place of business at a specific physical address in the Republic;
- (iv) a partnership;
- (v) a trust;
- (vi) an organ of state;”

- (d) By the insertion in rule 59A.01 (a) after the definition of “rebate user” of the following definition:

“registered agent” means a person located in the Republic who is a nominated agent of a foreign principal and is registered as prescribed in these rules;”

(e) By the substitution in rule 59A.01 (b) for subparagraphs (iii) and (iv) of the following subparagraphs:

- “(iii) A foreign principal must-
- (aa) apply on form DA 185 and the appropriate annexure for registration in respect of the activity for which registration is required; and
 - (bb) nominate a registered agent on form DA 185.D.
 - (cc) be represented by a registered agent in the performance of any function regulated by the Act.
- (iv) An applicant for registration as a registered agent must-
- (aa) apply on form DA 185 and the appropriate annexure; and
 - (bb) before registration, furnish the security bond the Commissioner may require and specifying the obligations the Commissioner may determine.
- (v) A registered agent nominated by a foreign principal–
- (aa) must act as agent on behalf of the foreign principal in the performance of any function regulated by the Act; and
 - (bb) may perform the functions of a licensed clearing agent on behalf of a foreign principal on complying with all the obligations imposed by the Act on such a registered agent.”

(f) By the substitution in rule 59A.03 (1) for paragraphs (a), (b) and (c) of the following paragraphs:

- “(a)(i) Subject to the provisions of the Act in connection with the registration of an importer or exporter for a specific activity, no person may import goods into, or export goods from, the Republic unless that person, except a person who imports or exports goods in terms of the provisions of rule 15.01 –
- (aa) is registered as an importer or exporter; and
 - (bb) if that person is a foreign principal, is represented by a registered agent.
- (ii) Despite subparagraph (i), importers and exporters will be allowed, subject to subparagraph (iv), to use registration code number 70707070 for clearance of goods at any place except the following places and from the date specified for each place:

Place	Date from
Kopfontein	11 February 2012

- (iii) Subject to any provision of the Act in which requirements for registration are specified, a person may apply for registration if such person is –
 - (aa) a natural person who is –
 - (A) a citizen or a permanent resident of the Republic or has a place of business at a specific physical address in the Republic; and
 - (B) at least 21 years old;
 - (bb) a juristic person that has a place of business at a specific physical address in the Republic;
 - (cc) the person having the effective management of an association of persons whether or not formed in the Republic that has a place of business at a specific physical address in the Republic;
 - (dd) if a partnership or a trust composed of individuals each of whom meets the qualifications required in item (aa);
 - (ee) in the case of –
 - (A) a deceased estate, the executor of the estate;
 - (B) an insolvent estate, the trustee;
 - (C) an organ of state, the official to whom the function in respect of the activity for which registration is required, is delegated;
 - (D) any institution, the person having the effective management of such institution.
- (iv) For the purposes of subparagraph (ii), registration code number 70707070 may be used if the importer or exporter-
 - (aa) has a business establishment or usually resides in a BLNS country;
 - (bb) imports or exports goods of which the value required to be declared for each consignment is less than R20 000, subject to the limitations of three such consignments during any calendar year; and
 - (cc) complies with any conditions imposed by the Commissioner.
- (b)(i) Before deciding whether to approve or refuse any application for registration as a registered agent the Commissioner must conduct investigations to–
 - (aa) verify the statements made by the applicant in the application; and
 - (bb) ascertain any facts relating to the activities in respect of which the registration will operate,
 to the extent that the Commissioner may regard as being materially relevant for considering the application.
- (ii) The applicant must make available books, accounts and other documents and furnish fully the information necessary to conduct such an investigation.
- (c) A clearing agent or registered agent may not apply on behalf of any applicant.”

(g) By the substitution for rule 60.03 (2) of the following rule:

- “(a) Subject to the provisions of the Act in which any requirement regarding licensing is specified, a person may apply for a licence if such person is –
- (i) a natural person who is –
 - (aa) a citizen or a permanent resident of the Republic or has a place of business at a specific physical address in the Republic; and
 - (bb) at least 21 years old;
 - (ii) a juristic person that has a place of business at a specific physical address in the Republic;
 - (iii) a partnership or a trust composed of individuals each of whom meets the qualifications required in subparagraph (i);
 - (iv) the person having the effective management of any other association of persons whether or not formed in the Republic that has a place of business at a specific physical address in the Republic;
 - (v) in the case of –
 - (aa) a deceased estate, the executor of the estate;
 - (bb) an insolvent estate, the trustee.
- (b) A clearing agent or registered agent may not apply on behalf of any applicant.”

(h) By the substitution in rule 64D.01 (1, 3) (c) for subparagraph (ii) of the following subparagraph:

- “(ii) except in the case of a foreign principal, submit with the application the completed agreement in accordance with the pro forma agreement specified in these rules;”

(ij) By the insertion after rule 64D.01 (1, 3) (c) of the following paragraph:

- “(d) A foreign principal must-
- (i) apply on form DA 185 and the appropriate annexure for licensing in respect of the activity for which licensing is required;
 - (ii) nominate a registered agent on form DA 185.D; and
 - (iii) be represented by a registered agent in the performance of any function regulated by the Act.”

(k) By the insertion in rule 64D.03 (1) in the definition of “consignor” after subparagraph (iv) of the following subparagraph:

“(v) any registered agent nominated by and acting on behalf of a foreign principal as contemplated in the rules for section 59A;”

(l) By the insertion in rule 64D.03 (1) of the following paragraph:

“(c) (i) Any reference in these rules to “foreign principal”, “located in the Republic”, and “registered agent”, shall, with the necessary changes, have the meaning assigned thereto in rule 59A.01

(ii) Unless the context otherwise indicates, any reference in these rules to “licensed remover of goods in bond”, “licensee” or “remover of goods in bond” includes a licensed remover of goods in bond contemplated in section 64D, whether or not located in the Republic.”

(m) By the deletion in rule 64D.04 (1) of paragraphs (d) and (e).

(n) By the substitution in rule 64D.05 (4) (a) for subparagraph (i) of the following paragraph:

“(i) imported goods landed in the Republic or retained on any road vehicle entering the Republic which are entered for removal in bond and carried to any destination within the Republic, another country in the common customs area or in a country outside the common customs area;”

(o) By the substitution in rule 64D.10 (5) for paragraph (a) of the following paragraph:

“(a) Every licensed remover of goods in bond located in the Republic or a registered agent shall, in respect of each consignment of bonded goods, provide security as determined by the Commissioner.”

(p) By the substitution in rule 64D.15 (9)(a)(i) for the words preceding item (aa) of the following words:

“(i) For the purposes of section 101 and notwithstanding anything to the contrary in any other rule contained, every licensed remover of goods in bond located in the Republic or a registered agent must –”

(q) By the substitution in rule 64D.15 (9) for paragraph (b) of the following paragraph:

“(b) A licence is issued subject to the condition that the licensee or registered agent or at least one of the licensee’s or registered agent’s employees permanently employed at the premises where or from where the business will be conducted must have sufficient knowledge of customs and excise laws and procedures to ensure that the activities to which the licence or registration relates are conducted efficiently and in compliance with the provisions of such laws and procedures.”

(r) By the substitution in rule 101A.01 for paragraph (c) of the following paragraph:

“(c) Subject to the provisions of section 3(2) any power, duty or function of the Commissioner contemplated in section 101A (except subsection (16)) and in these rules (including the agreement) is, unless otherwise specified in these rules, delegated to an officer occupying the post of **[Assistant General Manager] Group Executive: Customs** in the **[Customs Division of the]** South African Revenue Service.”

(s) By the substitution in rule 101A.01A (2)(a) for subparagraph (iii) of the following paragraph:

“(iii) manifests and empty container lists specified in rule 8.07(b), aircraft pre-arrival manifests and final manifests specified in rule 8.07(c), rail manifests specified in rule 8.07(d) and road-manifests specified in rule 8.07(e), by the carrier, master cargo carrier, cargo carrier, groupage operator, courier, railway authority or road haulier as respectively applicable in terms of those rules.”

(t) By the substitution in rule 101A.01A (2)(a) for subparagraph (v) of the following subparagraph:

“(v) imported goods or goods for export required to be declared on a SAD form in terms of any provision of the Act, by the importer, exporter or agent who is-

- (aa) accredited in terms of section 64E of Act; or
- (bb) not accredited in terms of section 64E of the Act and-
 - (A) delivers a total in excess of 10 manual declarations per calendar month; or
 - (B) submits a manual declaration exceeding 10 lines,

to any Controller or the Commissioner.”

(u) By the insertion after rule 119A.R39 (2B).03 of the following heading and rule:

“Adaptation of section 64B (1)

- 119A.S64B (1) (a) No person shall, for the purposes of this Act, for reward make entry or deliver a bill of entry relating to any goods on behalf of any principal contemplated in section 99(2), unless licensed as a clearing agent in terms of subsection (2) or registered as an agent as provided in the rules for section 59A.
- (b) The provisions of this Act regulating the activities of a licensed clearing agent shall apply with the necessary changes to a registered agent engaged in such activities.
- (c) The licensed clearing agent or registered agent shall be liable for the fulfillment of all obligations imposed on a foreign principal by this Act as contemplated in section 99(2).”

(v) By the insertion after rule 119A.S64B (1) of the following heading and rule:

“Adaptation of section 64D (1)

- 119A.S64D(1) No person, except if exempted by rule, shall remove any goods in bond in terms of section 18(1)(a) or for export in terms of section 18A, or any other goods that may be specified by rule unless –
- (a) licensed as a remover of goods in bond in terms of subsection (3);
and
- (b) if that person is not located in the Republic, is represented in the Republic by a person registered as an agent as provided in the rules for section 59A.”

(w) By the substitution in item 202.00 of the Schedule to the Rules of the following forms:

“DA 185 APPLICATION FORM: REGISTRATION/LICENSING OF CUSTOMS AND EXCISE CLIENTS

ANNEXURE DA 185.4A1: REGISTRATION CLIENT TYPE 4A1 – IMPORTER (LOCAL OR FOREIGN)

ANNEXURE DA 185.4A2: REGISTRATION CLIENT TYPE 4A2 – EXPORTER (LOCAL OR FOREIGN)

ANNEXURE DA 185.4B6: LICENSING CLIENT TYPE 4B6 – REMOVER OF GOODS IN BOND (LOCAL OR FOREIGN)

ANNEXURE DA 185.C: SECURITY PARTICULARS”

(x) By the insertion after Annexure DA 185.C in item 202.00 of the Schedule to the Rules of the following form:

“ANNEXURE DA 185.D: NOMINATION OF REGISTERED AGENT”

(y) By the insertion after Annexure DA 185.4A12 in item 202.00 of the Schedule to the Rules of the following form:

“ANNEXURE DA 185.4A13: REGISTRATION CLIENT TYPE 4A13 – REGISTERED AGENT “