

## SOUTH AFRICAN REVENUE SERVICE

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### 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.

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### CUSTOMS AND EXCISE ACT, 1964 AMENDMENT OF RULES (DAR230)

Under sections 7, 59A, 75 and 120 of the Customs and Excise Act, 1964 (Act No. 91 of 1964), the rules published in Government Notice R.1874 of 8 December 1995 are hereby amended to the extent set out in the Schedule hereto with effect from a date to be determined by notice in the *Gazette*.

**EDWARD CHRISTIAN KIESWETTER**

**COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

### SCHEDULE

#### 1. Amendment of rule 7.09

The following rule is hereby substituted for rule 7.09:

“7.09 No ship having South African nationality in terms of the Merchant Shipping Act, 1951, or the Ship Registration Act, 1998, [in respect of which a certificate of registry has been issued in terms of section 23 of the Merchant Shipping Act, 1951] and exclusively engaged in fishing, sealing or collecting and transporting guano or the recovery of rough diamonds on or off the coast of the Republic, the home port of which is either permanently or temporarily a place in the Republic, shall leave such place without a transire in terms of section 7(10).”.

## **2. Amendment of rule 59A.01A**

Rule 59A.01A is hereby amended by the insertion in paragraph (a) of the following subparagraphs after subparagraph (vi):

“(viA) selling eligible purchases of distillate fuel to diesel refund users, as prescribed in rule 75.25.02;

(viB) applying for diesel refunds under the diesel refund scheme, as prescribed in rule 75.25.03;”.

## **3. Amendment of rules 75**

The following headings and rules are hereby inserted after rule 75.24:

**“75.25 The rules numbered 75.25 followed by further digits relate to the refunds as contemplated in section 75(1A)(a).**

### **RULES IN RESPECT OF THE DIESEL REFUND SCHEME**

**Refunds granted in respect of distillate fuel in accordance with the provisions of section 75 and in terms of item 670.04 of Schedule No. 6 when such distillate fuel is purchased and used by the diesel refund user as prescribed in Note 6 in Part 3 of Schedule No. 6.**

#### **Application of provisions and definitions**

75.25.01 (a) Rules 75.25 apply to refunds granted in respect of distillate fuel in accordance with the provisions of section 75 and item 670.04 of Schedule No. 6.

(b) Section 59A and the rules thereto, including the definitions in such rules, apply with any necessary changes as the context may require for the purposes of the registration of sellers of eligible purchases of distillate fuel to diesel refund users and registration of diesel refund users under the diesel refund scheme.

(c) Section 119A and the rules thereto, including the definitions in such rules, apply with any necessary changes as the context may require for the purposes of the electronic processing of diesel refund applications and electronic payments under the diesel refund scheme through relevant e-filing procedures.

(d) For the purposes of rules 75.25 and any form to which these rules relate –

(i) any word or expression to which a meaning has been assigned in Note 6 in Part 3 of Schedule No. 6 has the meaning so assigned, unless the context otherwise indicates; and

- (ii) “diesel refund” means the refunds as contemplated in section 75(1A)(a) and includes any such refunds that are debt equalised against outstanding tax liabilities of the diesel refund user in terms of section 76C; “diesel refund scheme” means the mechanism whereby diesel refunds are granted in respect of distillate fuel that is purchased and used by the diesel refund user as prescribed in Note 6 in Part 3 of Schedule No. 6; and “diesel refund user” means the user as defined in section 75(1C)(b)(i) and as defined in Note 6 in Part 3 of Schedule No. 6 and who is registered as contemplated in section 75(1A)(b)(ii).

### **Registration and recordkeeping of a seller**

75.25.02 (a) Every person who intends to sell eligible purchases of distillate fuel to diesel refund users on or after the date on which rules 75.25 come into operation must apply for registration in accordance with rule 59A.01A(b)(i)(aa).

(b) Every registered seller of eligible purchases must –

- (i) whenever any of the particulars furnished in its application for registration changes in any material way, advise the Commissioner within seven days from the occurrence of such event by submitting a renewed application for registration reflecting the changed particulars; and
- (ii) keep detailed records reflecting the particulars for each sale of eligible purchases to any diesel refund user, including the duties paid thereon and transport and delivery thereof, available for inspection on request by the Commissioner for a period of five years calculated from the end of the calendar year in which such records were created.

### **Registration of the diesel refund user**

75.25.03 (a) Only a person who is registered as a diesel refund user under the diesel refund scheme as contemplated in section 75(1A)(b)(ii) may apply for diesel refunds in terms of item 670.04 of Schedule No. 6.

(b) Every person who intends to apply for diesel refunds under the diesel refund scheme on or after the date on which rules 75.25 come into operation must apply for registration in accordance with rule 59A.01A(b)(i)(aa).

(c) Every registered diesel refund user must, whenever any of the particulars furnished in its application for registration changes in any material way, advise the Commissioner within seven days from the occurrence of such event by submitting a renewed application for registration reflecting the changed particulars.

### **Registration profile of the diesel refund user**

- 75.25.04 (a) Every person who applies for registration in accordance with rule 75.25.03 must create a single diesel refund user registration profile electronically through the communicative system indicated on the SARS website for that purpose.
- (b) The registration profile of the diesel refund user must list the information prescribed in Note 6 in Part 3 of Schedule No. 6 in respect of all eligible purchases and qualifying activities of that diesel refund user, including the –
- (i) category of qualifying activities performed;
  - (ii) commercial fishing permit and the holder or cessionary thereof, if applicable;
  - (iii) mining authorisation and the holder or cessionary thereof, if applicable;
  - (iv) location where the qualifying activities are performed, which is the –
    - (aa) physical address or geographical location as applicable in agriculture, mining on land and electricity generation; or
    - (bb) vessel, installation or locomotive as applicable in fishing, offshore mining, offshore shipping, harbour shipping and rail freight transport;
  - (v) storage facilities for eligible purchases of the diesel refund user, together with the identifying features and fuel storage capacity thereof, as well as the physical address of any such storage facility which is situated at a fixed geographical location;
  - (vi) assets that are powered by eligible purchases of the diesel refund user, together with the identifying features, make, model and fuel tank capacity thereof, as well as the physical address of any such asset which is situated at a fixed geographical location; and
  - (vii) diesel refund relationships of the diesel refund user as disclosed or re-disclosed and confirmed in accordance with rule 75.25.05.
- (c) Every diesel refund user must update its registration profile by the means indicated in paragraph (a) within 30 days of any change in particulars provided therein.

### **Diesel refund relationships of the diesel refund user**

- 75.25.05 (a) In accordance with rule 59A.06A, rule 59A.06B and rule 59A.06C, every diesel refund user must disclose, confirm or reject, and re-disclose as applicable its customs and excise relationships to the Commissioner.

- (b) For the purposes of paragraph (a), “customs and excise relationships” includes any diesel refund relationships which the diesel refund user entered into for the purposes of any qualifying activity, such as any –
- (i) agreement of the diesel refund user as a member of a partnership, joint venture or an unincorporated body of persons;
  - (ii) seller of eligible purchases to the diesel refund user;
  - (iii) transporter of eligible purchases for the diesel refund user;
  - (iv) agreement of the diesel refund user for the purposes of hiring, leasing or chartering any asset to perform any qualifying activity; and
  - (v) agreement of the diesel refund user for the purposes of contracting or sub-contracting any person to perform any qualifying activity.
- (c) Every diesel refund user must –
- (i) include its disclosed or re-disclosed and confirmed diesel refund relationships in its registration profile in terms of rule 75.25.04(b)(vii); and
  - (ii) update the disclosure of its diesel refund relationships in terms of paragraph (a) within 30 days of any change in particulars provided therein.

#### **Submission of diesel refund applications**

- 75.25.06 (a) For the purposes of applying for a diesel refund, every diesel refund user must submit electronically within the period prescribed in paragraph (b) –
- (i) a diesel refund return on form DSL 201; and
  - (ii) upon request from the Commissioner, any substantiating source documentation as contemplated in paragraphs (c) and (d) of section 75(4A) and prescribed in Note 6 in Part 3 of Schedule No. 6.
- (b) The return and documentation specified in paragraph (a) must be submitted within 30 days after the last day of the accounting period, but not later than the penultimate working day of the month following that accounting period.
- (c) For the purposes of paragraph (b), an accounting period shall be a period of one calendar month or any part thereof.
- (d) Should the diesel refund user not have a diesel refund application for any particular accounting period, that diesel refund user may choose to not submit a diesel refund return for such accounting period.

#### **Determination of diesel refund applications**

- 75.25.07 (a) Every diesel refund user must determine its monthly diesel refund application according to the prescriptions of Note 6 in Part 3 of Schedule No. 6 by –

- (i) limiting the diesel refund application to the eligible purchases of that diesel refund user which were purchased and used in qualifying activities in the Republic by such diesel refund user;
- (ii) excluding any non-eligible purchases of that diesel refund user from the diesel refund application; and
- (iii) verifying the diesel refund application through the required substantiating source documentation of that diesel refund user.

(b) Every diesel refund application is –

- (i) restricted to the eligible purchases and qualifying activities of the diesel refund user which are supported by the information current on the registration profile of that diesel refund user within 30 days of any change in particulars provided therein; and
- (ii) subject to presentation by the diesel refund user of the required substantiating source documentation and any other proof prescribed in Note 6 in Part 3 of Schedule No. 6 at such time and in such form as the Commissioner may request.

(c) Any diesel refund application must be submitted within two years from the date of purchase of such distillate fuel, on the basis that –

- (i) any distillate fuel purchases shall be deemed to have been used in the order of the dates of such purchases;
- (ii) the amount of the diesel refund application shall be calculated at the refund rate applicable on the date of such purchase; and
- (iii) the date of such purchase shall be the date of issue of the purchase invoice as contemplated in section 75(4A)(c) and prescribed in Note 6 in Part 3 of Schedule No. 6.

### **Processing of diesel refund applications and payments**

75.25.08 (a) Any diesel refund application and payment must be processed electronically through relevant e-filing procedures in terms of section 119A and the rules thereto with any necessary changes as the context may require.

(b) Any diesel refund user that chooses to correct its historical diesel refund applications must do so electronically, on the basis that –

- (i) corrections that result in a decrease in a historical diesel refund application must be effected on the diesel refund e-filing account of such diesel refund user for the historical period concerned; and
- (ii) corrections that result in an increase in a historical diesel refund application must be effected through the monthly diesel refund application process on

a future diesel refund return of such diesel refund user for the historical period concerned.

### **Implementation**

75.25.09 (a) Every approved registration that is applied for before rules 75.25 come into operation will take effect on the date these rules come into operation.

(b) Every diesel refund user must take stock of all distillate fuel in that diesel refund user's possession when operations cease on the day before rules 75.25 come into operation and retain such stock records for a period of five years.

(c) Any diesel refund application in respect of distillate fuel purchased before rules 75.25 come into operation must be made by means of the system in use for the processing of diesel refunds before these rules come into operation and which will remain active for two years after these rules come into operation.

(d) For purposes of rule 75.25.06(c), the accounting period will commence on the date rules 75.25 come into operation."

### **4. Substitution of form**

Item 202.00 of the Schedule to the rules is hereby amended by the substitution of the following form:

"DA 185 Application form: Registration/Licensing of Customs and Excise Clients".

### **5. Insertion of forms**

Item 202.00 of the Schedule to the rules is hereby amended by the insertion of the following forms:

(a) "DA 185.4A21 Registration client type 4A21 – Seller of eligible purchases of distillate fuel to diesel refund users";

(b) "DA 185.4A22 Registration client type 4A22 – Diesel refund user under the diesel refund scheme"; and

(c) "DSL 201 Diesel refund return".