

SOUTH AFRICAN REVENUE SERVICE

**Government Gazette No. 44384
No. R.305**

2021-04-01

CUSTOMS AND EXCISE ACT, 1964 AMENDMENT OF RULES

Under sections 58A and 120 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.

**EDWARD CHRISTIAN KIESWETTER
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

SCHEDULE

Insertion of rules for section 58A

The following rules are hereby inserted under Chapter VII of the Rules to the Customs and Excise Act, 1964 (Act No. 91 of 1964):

“RULES FOR SECTION 58A OF THE ACT

58A.01 Definitions

For purposes of the rules under section 58A, unless the context otherwise indicates –

“**allowable quantity**” or “**AQ**”, in relation to excisable goods referred to in rule 58A.02, means the quantity of such goods that may be entered for home consumption during a controlled period as –

- (a) calculated in accordance with rule 58A.04 in the case of a manufacturer or an importer of such goods other than a new entrant; or
- (b) approved in terms of rule 58A.05 in the case of a new entrant;

“Budget Day” means the day in February of any year on which the Minister of Finance delivers the National Budget Speech in Parliament;

“current year” means the year in which the allowable quantity must be determined and the controlled period starts in anticipation of the increase in the rate of excise duty on Budget Day of the following year;

“customs and excise relationship” means a business relationship as defined in rule 60.01(1)(a);

“day” means a calendar day;

“new entrant”, in relation to excisable goods referred to in rule 58A.02, means a manufacturer or an importer of such goods who starts entering such goods for home consumption 30 days or less before the start of a controlled period; and

“year” means a calendar year.

58A.02 Excisable goods to which section 58A applies

Section 58A and the rules thereunder apply to locally manufactured and imported cigarettes of tariff subheadings 2402.20 and 2402.90.2.

58A.03 Controlled period during which anti-forestalling measures apply

A controlled period contemplated in section 58A(1) comprises a period starting on 1 December of any year and ending at the time when the rate of excise duty is increased on Budget Day of the following year.

58A.04 Formula to be used by persons other than new entrants for calculation of allowable quantities of excisable goods to be entered for home consumption during a controlled period

A manufacturer or an importer of excisable goods referred to in rule 58A.02 other than a new entrant must use the following formula to calculate the allowable quantity (AQ) in respect of such goods:

$$AQ = \{(TQ \div Y) + 2\% (TQ \div Y)\} \times CP$$

Where –

- (a) TQ is the total quantity of such goods which that manufacturer or importer entered for home consumption during the period represented by Y;
- (b) Y is the number of days from 1 December of the previous year to 30 November of the current year during which that manufacturer or importer entered such goods for home consumption, which is –
 - (i) 365 days in the case of manufacturers or importers that started entering such goods for home consumption on or before 1 December of the previous year; or
 - (ii) the number of days from the first entry after 1 December of the previous year until 30 November of the current year in the case of manufacturers or importers that started entering such goods for home consumption after 1 December of the previous year;
- (c) 2% is an allowance for additional growth in the market; and
- (d) CP is 90 days.

58A.05 Approval of allowable quantities of excisable goods to be entered for home consumption by new entrants during a controlled period

- (a) Any new entrant must apply to the Commissioner for approval of the allowable quantity of excisable goods that may be entered by that new entrant for home consumption during the relevant controlled period.
- (b) An application contemplated in paragraph (a) must before the start of the relevant controlled period be submitted –

- (i) electronically through eFiling if this mode of submission is available for such application; or
 - (ii) in paper format to the Excise Office serving the area where the applicant's operations are carried out.

- (c) An application referred to in paragraph (b) must reflect –
 - (i) the applicant's name and customs and excise client number;
 - (ii) if the application is submitted by a clearing agent or registered agent on behalf of the applicant, the name and customs and excise client number of the clearing agent or registered agent;
 - (iii) the date on which the applicant started entering or intends to start entering the relevant excisable goods for home consumption;
 - (iv) the product range of such goods, including brand names and sizes;
 - (v) the total quantity of such goods, regardless of brands or sizes, that the applicant intends to enter for home consumption during the controlled period;
 - (vi) the geographical area where such goods are, or are expected to be, consumed;
 - (vii) details of orders in respect of such goods, which may be provided in a separate supporting document; and
 - (viii) details of any customs and excise relationship of the applicant with a person contemplated in rule 58A.04 or rule 58A.05(a).

- (d) An application referred to in paragraph (b) must be supported by the following documents:
 - (i) A document motivating the quantity of excisable goods referred to in paragraph (c)(v);
 - (ii) if the applicant is a natural person, a certified copy of that person's identification document;
 - (iii) if the applicant is a juristic entity, a certified copy of the document authorising the person who submitted the application to act on behalf of the entity;

- (iv) a certified copy of the identification document of an authorised person referred to in subparagraph (iii);
 - (v) if the application is submitted by a clearing agent or a registered agent, a certified copy of the document authorising such person to act as the representative of the applicant;
 - (vi) documents substantiating any material facts mentioned in the application; and
 - (vii) any other documents that may be required by the Commissioner for purposes of considering the application.
- (e) The applicant is entitled to be notified of the outcome of the application referred to in paragraph (b) within 21 working days and, if the application is refused, reasons for the decision.

58A.06 Applications for approval of quantities to be entered for home consumption in excess of allowable quantities

- (a) A person that seeks approval as contemplated in section 58A(3) to enter a quantity of excisable goods for home consumption in excess of the allowable quantity must submit an application –
- (i) electronically through eFiling if this mode of submission is available for such application; or
 - (ii) in paper format to the Excise Office serving the area where the applicant's operations are carried out.
- (b) An application referred to in paragraph (a) must reflect –
- (i) the applicant's name and customs and excise client number;
 - (ii) if the application is submitted by a clearing agent or registered agent on behalf of the applicant, the name and customs and excise client number of the clearing agent or registered agent;
 - (iii) the kind or description of excisable goods to which the application relates;
 - (iv) the relevant controlled period;
 - (v) the current allowable quantity as well as the excess quantity applied for; and

- (vi) the reasons why the excess quantity is applied for, which may be motivated in a separate supporting document.
- (c) An application referred to in paragraph (a) must be supported by the following documents:
- (i) If the applicant is a natural person, a certified copy of that person's identification document;
 - (ii) if the applicant is a juristic entity, a certified copy of the document authorising the person who submitted the application to act on behalf of the entity;
 - (iii) a certified copy of the identification document of an authorised person referred to in subparagraph (ii);
 - (iv) if the application is submitted by a clearing agent or a registered agent, a certified copy of the document authorising such person to act as the representative of the applicant;
 - (v) documents substantiating any material facts mentioned in the application; and
 - (vi) any other documents that may be required by the Commissioner for purposes of considering the application.
- (d) The factors to be taken into consideration when deciding an application referred to in paragraph (a) include –
- (i) stock outages;
 - (ii) shipment delays;
 - (iii) product returns or recalls;
 - (iv) introduction of new products;
 - (v) above average market growth;
 - (vi) industrial or labour action;
 - (vii) acquisitions or mergers;
 - (viii) events of *force majeure*;
 - (ix) national state of disaster; and
 - (x) other relevant unforeseen and unavoidable events.

- (e) The applicant is entitled to be notified of the outcome of the application referred to in paragraph (a) within 21 working days and, if the application is refused, reasons for the decision.

58A.07 Keeping of records

- (a) A person contemplated in rule 58A.04 must keep record of –
- (i) any information used for purposes of calculating the allowable quantity, as well as calculations done in respect of such allowable quantity;
 - (ii) any information used for purposes of obtaining an increase of the allowable quantity, if applicable; and
 - (iii) the quantity of excisable goods entered for home consumption during a specific controlled period.
- (b) A person contemplated in rule 58A.05(a) must keep record of –
- (i) any information used for purposes of obtaining approval of the allowable quantity;
 - (ii) any information used for purposes of obtaining an increase of the allowable quantity, if applicable; and
 - (iii) the quantity of excisable goods entered for home consumption during a specific controlled period.

58A.08 Anti-forestalling penalties

The sum to be deposited in circumstances contemplated in terms of section 91(1)(a) in respect of a contravention of or failure to comply with –

- (a) section 58A(3) is R15 000 or double the excise duty payable on the goods cleared in excess of the allowable quantity, whichever is the greatest; and
- (b) rule 58A.07(a) or (b) is R8 000.”.