

# CUSTOMS

## EXTERNAL POLICY

## INTERNAL ADMINISTRATIVE APPEAL

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## 1 SUMMARY OF MAIN POINTS

- a) Clients **have the right to request reasons for** any decision taken by Customs **and where they are not satisfied they get one (1) opportunity to appeal to the relevant appeal committee.**
- b) **The client must adhere to the periods stipulated in the Rules for the submission to be accepted by Customs.**
- c) **A submission that is delivered to the wrong office will not be accepted.**
- d) **Should clients be unhappy with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee.**

## 2 POLICY

- a) **A client may react to any decision made by Customs in the following manner:**
  - i) **Request for reasons (if none were provided);**
  - ii) **Request for suspension of payable amounts;**
  - iii) **Request for extension to lodge an appeal;**
  - iv) **Lodge an appeal; or**
  - v) **Accept the decision.**
- b) **The client's submission to Customs must:**
  - i) **Be in writing on a:**
    - A) **Letter in the case of a request for reasons, suspension of amounts or extension to appeal; or**
    - B) **DA 51 in the case of an internal administrative appeal;**
  - ii) **Reflect the requirements or details mentioned in Rule:**
    - A) **77H.02 (2) in the case of a request for reasons;**
    - B) **77H.03 (4) and (5) in the case of a request for suspension of amounts payable,**
    - C) **77H.04 (5) in the case of submitting an appeal (6), and**
    - D) **77H.05 (4) in the case of a request for extension to submit an appeal; and**
  - iii) **Accompanied by supporting documents or information.**
- c) **The client must deliver the submission:**
  - i) **To the office that communicated the decision; or**
  - ii) **In the case of a decision relating to the declaration process, to the office indicated on the Customs Clearance Declaration as the office of destination or departure.**
- d) **A submission to SARS must be submitted electronically through email or can be deliver by hand.**
- e) **A person who made a submission to SARS must be provided with a written acknowledgement of receipt indicating the date of receipt of the submission.**
- f) **If the submission was:**
  - i) **Handed in at the office the client brings two (2) copies of the submission. The Customs Officer will sign both copies and hands one (1) to the client; or**
  - ii) **Sent via email the Customs Officer will send an email to the client acknowledging receipt.**
- g) **If the submission is not on time, the submission will be rejected and Customs will notify the client of the rejection.**
- h) **If a client makes a submission to request extension to submit an appeal, and the request is granted, the Customs Officer will notify the client that the period is extended by no more than twenty (20) days.**
- i) **If the submission is not complete or Customs requests the client to provide additional information, the Customs Officer will request the client to complete and resubmit the submission or furnish more information within fifteen (15) days.**

- j) When requested to provide reasons for a decision, Customs must do so in writing within forty-five (45) days.
- k) No duties, levies or tax, which are due and payable, may be waived in terms of the Internal Administrative Appeal (IAA) process; however, these amounts may be suspended pending the outcome of the applicable appeal committee's decision.
- l) The appellant who has submitted an appeal against a decision has the right to withdraw that appeal at any time during the appeal process.
- m) The appeal committee must make a decision within sixty (60) days after the date on which the appeal was lodged. However, if the committee requires more time to make a decision, due to:
  - i) The complexity of the matter – the period must be extended by no more than thirty (30) days ;or
  - i) Exceptional circumstances – the period may be extended as may be reasonable in such circumstances.
- n) Should an appellant not be satisfied with the decision of an appeal committee, his/her further recourse is **Alternative Dispute Resolution (SC-CC-25)** or litigation.
- o) **Keeping of records**
  - i) Every Committee must keep for record purposes for a period of five (5) years:
    - A) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
    - B) Any data related to such documents created by means of a computer;
  - ii) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A)
  - iii) Every client must produce such books, accounts and documents on demand.
- p) **Penalties**
  - i) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence.
  - ii) Offences may render the client liable to, as provided for in the Act:
    - A) Monetary penalties (SC-CO-01-02);
    - B) Criminal prosecution; and/or
    - C) Suspension/cancellation of registration/licence/accreditation.
- q) **Promotion of Administrative Justice Act**
  - i) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
    - A) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
    - B) Imposes a duty on the State to give effect to those rights;
    - C) Promotes an efficient administration as well as good governance; and
    - D) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
  - ii) Administrative action, which significantly and unfavourably affects the rights or valid expectations of any person, must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
  - iii) A person must be given:
    - A) Written reasons of the nature and purpose of the proposed administrative action;
    - B) A reasonable opportunity to make representations;
    - C) A clear statement of the administrative action; and
    - D) Adequate notice of any right of review or internal appeal, where applicable.

- iv) Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.
- v) Before administrative action can be taken by Customs the client must be allowed the opportunity to:
  - A) Obtain assistance and, in serious or complex cases, legal representation;
  - B) Present and dispute information and arguments; and
  - C) Appear in person.
- vi) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within thirty (30) days after the date on which the client became aware of the action, request Customs to furnish written reasons for the action.
- vii) Customs must within forty five (45) days after receiving the request, give the client adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

### 3 RELATED INFORMATION

#### 3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Customs and Excise Act No. 91 of 1964:</b> Part A of Chapter XA of the Act: Sections 3(1) and (2), 47 (9), 65, 69, and 77 A to H and 101. <b>Customs and Excise Rules:</b> Rules 77H.01 to 77H.14 <b>Value-Added Tax Act No. 89 of 1991:</b> Sections 7(1), 13(3), 39(4) and 39(7), as well as Schedule 1 to the Act
Other Legislation:	<b>Promotion of Administrative Justice Act No. 3 of 2000:</b> Preamble and Sections 3 and 5, <b>as well as Regulations 23 and 25</b>
International Instruments:	<b>Revised Kyoto Convention:</b> General Annex – Chapter 10

#### 3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CC-26	Alternative Dispute Resolution - External Policy
SC-CF-55	Clearance Declaration - External Policy
SC-CO-01-02	Offences and Penalties – External Standard

#### 3.3 Quality Records

Number	Title
DA 51	Internal Administrative Appeal form
SAD 500	Customs Clearance Declaration

### 4 DEFINITIONS AND ACRONYMS

<b>Appeal</b>	An internal administrative appeal contemplated in Part A of Chapter XA of the Act and Rules thereto
<b>Appellant</b>	Any person who lodges an appeal and includes any duly authorised representative of such person
<b>Amount to which the appeal relates</b>	The amount appealed against by the appellant as specified in a notice demanding payment issued by SARS.
<b>Committee Member</b>	Any officer nominated by the chairperson of an appeal committee to be a member of that appeal committee and serves, or may serve on that appeal committee when an appeal is considered
<b>Day</b>	Any reference to “day” in this guideline means a business day. A business day is a working day which excludes weekends, public holidays and period 16 December- 15 January.

<b>Decision</b>	Includes – <ul style="list-style-type: none"> <li>a) Any determination or other act of an administrative nature for the purposes of this Act;</li> <li>b) Any amendment or withdrawal and making of a decision; and any refusal to take a decision</li> </ul>
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## 5 DOCUMENT MANAGEMENT

<b>Policy Owner</b>	GE: Customs and Excise Strategy & Legal Policy
<b>Detail of change from previous revision</b>	Included: <ul style="list-style-type: none"> <li>a) The client may request <ul style="list-style-type: none"> <li>i) Reasons for a decision issued if not provided;</li> <li>ii) Suspension of amount payable; and</li> <li>iii) Extension for submission of appeal.</li> </ul> </li> <li>b) The submission must be delivered within thirty (30) days and to which office</li> <li>c) The committee has sixty (60) days to make a decision, however, additional time may be allowed if the matter is complex or exceptional</li> </ul>
<b>Template number and revision</b>	GC-TM-03 - Rev 9