

EXCISE

EXTERNAL POLICY

AVIATION KEROSENE

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1 SUMMARY OF MAIN POINTS

- a) The policy applies to entities that acquire, sell, dispose of in any manner, is in possession of, or have under their control any Aviation Kerosene (AK).
- b) The policy does not cover the Registration requirements dealt with in document SE-LR-02.

2 POLICY

- a) Section 37A of the Customs and Excise Act, No. 91 of 1964 (the Act) makes provision for marked goods (including marked illuminating kerosene) and certain goods that are free of duty.
- b) Aviation Kerosene is specifically dealt with in Rule 37A.13. AK attracts VAT if used on domestic flights. If AK is disposed of for purposes other than that of use as fuel in an aircraft engine, it is regarded as unmarked illuminating kerosene (IK) which means that it (AK) is only rebated of duty / levies and VAT once it is **marked** in terms of Rule 37A.01(b).
- c) According to additional note 1(d) to Chapter 27 of the Harmonized Nomenclature Tariff "Aviation Kerosene", is any product intended for use, advertised for use, put up for use or otherwise marketed or disposed of for use as fuel in aircraft fitted with turbo-jets, turbo-propellers and other gas turbines. These products do not attract any duty / levies but are subject to VAT when going into domestic consumption.
- d) Illuminating Kerosene is marked with an invisible marker called Authentix A1 so that, should it be mixed with "Distillate Fuel" (diesel), its presence can be detected if the diesel is tested.
- e) Aviation Kerosene is theoretically the same product as unmarked IK, which means that it can also be used as a diesel extender.
- f) A marker could be added, however, in terms of the International Air Transport Association (IATA) regulations, for safety reasons, **NO ADDITIONAL ADDITIVE WHICH HAS NOT BEEN APPROVED OR MARKER** may be added to "Aviation Kerosene". Therefore, the use thereof must be controlled to ensure correct handling.
- g) Should the product be used in aircraft, it does not attract any duty / levies, but is subject to VAT when used in domestic flights. The AK used in international flights is zero rated for VAT.
- h) All the airports in South Africa have a dedicated AK supplier or operator who supplies AK to the carriers and in terms of the Act, these suppliers must be registered with the relevant local Controller / Branch Manager.
- i) In terms of IATA, AK has a specific shelf life and could be returned to the supplier in three (3) instances; i.e.
 - i) When the product is off specification;
 - ii) When aircraft are serviced and the fuel is not returned to the aircraft; and
 - iii) Where the product becomes contaminated.
- j) Should AK be used for other purposes (e.g. diesel extender) than the propulsion of aircraft, Excise duty, Fuel levy and Road Accident Fund (RAF) levy becomes payable.
- k) These duties / levies may be set-off (excluding the VAT) as returned product by the refinery to which it is returned.
- l) In this regard, a credit note will be issued by the manufacturing warehouse (VM).

2.1 Keeping of records

- a) The licensee or registrant must keep records of:
 - i) Such invoice / flight receipt / stock requisition or delivery note issued in respect of any AK **acquired (received)** from any such licensee or other registered supplier; and

- ii) Such invoice / flight receipt / stock requisition or delivery note for AK **supplied** to any registered supplier for fuelling aircraft.
- b) A licensee may keep electronic records if they can be readily converted into hard (paper) copies and made available to the SARS when required / requested.
- c) For purposes of this Act, the retention period for all Excise related documents (prescribed Customs and Excise documents as well as relevant trader's commercial and financial records) is five (5) years, subject to the provisions of Rule 60.08(2)(a)(i).

2.2 Penalties

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence.
- b) Offences may render the client liable to, as provided for in the Act:
 - i) Monetary penalties ;
 - ii) Criminal prosecution; and / or
 - iii) Suspension / cancelation of license.

2.3 Promotion of Administrative Justice Act

- a) 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:
 - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
 - ii) Imposes a duty on the State to give effect to those rights;
 - iii) Promotes an efficient administration as well as good governance; and
 - iv) 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.
- b) Administrative action, which significantly and unfavourably affects the rights or valid expectations of any person, must be procedurally fair. A fair administration procedure depends on the circumstances of each case.
- c) A person must be given:
 - i) Written reasons of the nature and purpose of the proposed administrative action;
 - ii) A reasonable opportunity to make representations;
 - iii) A clear statement of the administrative action; and
 - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) Before administrative action can be taken by Excise, the client must be allowed the opportunity to:
 - i) Obtain assistance and, in serious or complex cases, legal representation;
 - ii) Present and dispute information and arguments; and
 - iii) Appear in person.
- e) Just administrative action requires the Excise 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.
- f) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, after the date on which the client became aware of the action, request Excise to furnish written reasons for the action.
- g) Excise must, after receiving the request, give the client adequate reasons in writing for an administrative action. It must, subject to subsection (4) of the Promotion of Administrative Justice Act

3. of 2000 and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.

2.4 Appeal against decisions

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act, they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SE-APL-02.
- b) 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. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

2.5 Aviation Kerosene

- a) Aviation kerosene is identical to IK as regards technical specification; however, there are more **strict controls** in the handling of AK. The reason that there is a need to audit AK is to ensure its proper use, and obviate the potential for tax evasion.
- b) Aviation kerosene can be decanted from the aircraft should the need arise for the following reasons:
 - i) Should the fuel become contaminated for any reason; and / or
 - ii) Should repairs be required to the aircraft that necessitates the removal of the fuel.
- c) The fuel that is decanted from the aircraft is usually stored in drums or dedicated tanks and returned to an aircraft or could be sold / disposed of.
- d) The decanted fuel (AK) may be sold to persons who in turn resell the product as either unmarked IK or as a cleaning solvent. In this regard, the product becomes Excisable. However, the said products could be mixed with diesel, which becomes illicit goods.
- e) Section 37A(9)(e)(i) determines that any goods other than marked goods for which provision is made free of duty in Schedule 1 must **NOT** be used for any other purpose than that for which they are removed from a Customs and Excise warehouse, except with the prior permission of the Commissioner (via the nearest Controller / Branch Manager) and on payment of the relevant duty / levies.

2.5.1 Receipt of AK into fuel storage facility

- a) On receipt of aviation kerosene, the tanks need to be dipped by the fuel storage operator prior to the actual receiving thereof.
- b) Once the AK has been received into the tanks at the fuel storage facility, an after dip has to be taken and the quantity of product calculated.
- c) The driver of the vehicle will present a delivery note to the fuel storage operator for signature, of which a copy will be kept by such operator.
- d) An invoice will be generated at a later stage for the product received.

2.5.2 Supply of aviation kerosene

- a) Any such warehouse licensee or registered supplier shall -
 - i) Complete and issue an invoice / flight receipt / stock requisition or delivery note for each quantity supplied, which shall include at least -
 - A) A statement that the AK is to be used solely as fuel in aircraft;
 - B) The name and address of the licensee or the name and address of the registered supplier who supplies the AK;
 - C) If applicable, the registered name and address of the supplier who acquired it;
 - D) The delivery address, if it is not the same as the registered address;

- E) When supplied for fuelling aircraft the registration number of the aircraft;
 - ii) Obtain a signed receipt for any such supply.
- b) Any application to dispose of AK for any other purpose may be made through the nearest Controller / Branch Manager and such goods shall be subject to such Customs and Excise control as the Controller / Branch Manager may require.

2.5.3 Maintenance on aircraft

- a) Maintenance companies repair and service aircraft and are normally situated on the airport grounds. With repair and service, the **AK has to be decanted from the aircraft**. This means that -
- i) To dispose of such AK (taken from the aircraft) for any other purpose, the maintenance companies or operators of the decanted product must apply through the nearest Controller / Branch Manager to do so, as mentioned in Rule 37A.13(d).
 - ii) After the AK is decanted, the fuel may be sold as boiler fuel to a company, such as Fuel Firing Services (FFS), to facilitate disposal. They use the product to manufacture boiler fuel. This procedure should be done under Excise supervision to ensure that the product is rendered unsuitable for use as a diesel extender and a certificate should be obtained from the recipient of the fuel confirming that the product was rebranded to be used as boiler fuel.
 - iii) The maintenance company or operators of the decanted product must keep a record of all fuel removed from aircraft and be able to account for all AK so removed.
 - iv) Should the company not be able to account for AK that was removed from aircraft, the company would be liable for the duties and levies.

3 RELATED INFORMATION

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 27(4), (9) and (10), 37A and 38(1) Customs and Excise Rules: Rules 18(A).03, 18(A).04, 18(A).05, 37A.07, 37A.13 and 60.08(2)(a)(i) Customs and Excise Tariff: Schedule 1 Parts 1, 2A, 5A and 5B
Other Legislation:	Promotion of Administrative Justice Act No. 3 of 2000: Section 3 IATA Regulations
International Instruments:	None

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CC-26	Alternative Dispute Resolution – External policy
SE-APL-02	Internal Administrative Appeal – External Policy
SE-LR-02	Licensing and Registration – External Policy

3.3 Quality Records

N/A

4 DEFINITIONS AND ACRONYMS

Act	Customs and Excise Act, No. 91 of 1964
AK	Aviation Kerosene
Commissioner	Commissioner for SARS
FFS	Fuel Firing Services
IK	Illuminating Kerosene
IATA	International Air Transport Association

Marked illuminating kerosene	Illuminating kerosene to which the marker Authentix A1 which is added in a proportion equal to or exceeding 20 milligrams of the marker to prevent the product of being used as a diesel extender
PAJA	Promotion of Administrative Justice Act
RAF	Road Accident Fund
SARS	South African Revenue Service
Schedule 1	Customs, Excise and Sales Duties and Surcharge
Unmarked illuminating kerosene	Illuminating kerosene which does not contain the marker for use in aircraft
VAT	Value Added Tax

5 DOCUMENT MANAGEMENT

Policy Owner	Executive: Excise
Detail of change from previous revision	Provision has been made for the Promotion of Administrative Justice Act (PAJA) under paragraph 2.3; Cross References under paragraph 3.2 have been updated; Definitions and Acronyms under paragraph 4 have been updated; Document Q-code changed from SE-FL-10 to SE-AK-02; and Template Q-code changed from ECS-TM-03 to GC-TM-03.
Template number and revision	GC-TM-03 - Rev 9