

**EXCISE**

**EXTERNAL STANDARD**

**TARIFF DETERMINATION**

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## 1 SUMMARY OF MAIN POINTS

- a) All Excise (imported or locally manufactured goods) transactions require declarations according to an appropriate tariff heading.
- b) The tariff classification is the process whereby any imported or exported commodity is categorised by virtue of:
  - i) What it is;
  - ii) How it is made; or
  - iii) What it is used for.
- c) The tariff classification code is directly linked to the rate of duty payable on that commodity. Items are classified in terms of the International Harmonised Commodity and Coding System (Harmonised System), under the World Customs Organisation (WCO) Harmonised System Convention to which South Africa is a contracting party.
- d) All member countries of the WCO must use a uniform tariff up to the first six (6) digits of the tariff code. In addition South Africa has in Schedule 1 expanded the international tariffs with two further sub digits which must also be declared.
- e) The verification and classification of imported or exported goods are specifically mentioned in the provisions of:
  - i) Section 47(9); and
  - ii) The rules of classification.
- f) As of 1 April 2015, any alcoholic beverage, as contemplated in Chapter 22 of Part 1 of Schedule No. 1, that is a first importation or a new manufactured product must be submitted for tariff classification where that beverage is imported or manufactured as prescribed by the Rules. Prior to the submission of a tariff determination through the Branch Office (BO), the client must submit the product(s) to Department of Agriculture, Forest and Fisheries (DAFF). The Department will issue a **Certificate** to the client to confirm that the product complies with the Liquor Products Act.
- g) The standard operating procedure for the submission of samples is dealt with in the Samples Policy (Refer to SE-FS-27).
- h) Submissions for a tariff determination must be forwarded to the BO as prescribed in paragraph 3.2.
- i) This document does not cover:
  - i) Submission of samples (excluding alcoholic beverages) as this is dealt with in SE-FS-27; and
  - ii) Refunds and Drawbacks as this are dealt with in SC-DT-C-13.

## 2 STANDARD

### 2.1 The Explanatory Notes to the Harmonised System (HSEN)

- a) The interpretation of Schedule 1 Part 1 is in terms of Section 47(8)(a) subject to the Explanatory Notes (HSEN) issued by the WCO. The HSEN sets out in a systematic form the goods handled in international trade. It groups these goods in sections, chapters and sub-chapters, which have been given titles indicating as concisely as possible the categories or types of goods they cover.
- b) In many cases, the variety and number of goods classified in a section or chapter are such that it is impossible to cover them all or to mention them specifically in the titles. The HSEN are the most important classification tool, as it constitutes the official interpretation of the Nomenclature at international level. The HSEN follows the systematic order of the Harmonised System, provides commentary on the scope of headings and where appropriate also subheadings.

- c) The HSEN must be used in difficult and doubtful cases to explain or supplement the heading and Notes, not override or contradict them.
- d) The HSEN must also be used to ascertain the correct interpretation of the Harmonised System itself, however, is not an exhaustive, unchangeable commentary on the overall scope of the headings and subheadings of the Harmonised System. The HSEN must always be read in strict conformity with the texts of the Harmonised System itself from which they cannot be disassociated and in particular with the Interpretive Rules and the section and chapter notes.
- e) Tariff classification is specifically governed by Section 47(9) and is therefore required knowledge for any prospective classifier.

## 2.2 Determining a tariff heading

- a) Excise may in writing determine the tariff heading on imported or locally manufactured goods as a result of an application for a tariff determination or on a report made by a delegated branch.
- b) In terms of Section 47(9)(a)(ii) a declaration released as entered is not deemed to be a determination.
- c) An opinion given verbally is not regarded as a tariff determination.
- d) The Commissioner may publish the tariff determinations in the Government Gazette [Section 47(9)(c)].
- e) The Commissioner may amend or withdraw a determination and make a new determination [Section 47(9)(d)]. The new determination will be in effect from:
  - i) The date of first entry of the goods in question;
  - ii) The date of the notice in the Government Gazette;
  - iii) The date of the first determination;
  - iv) The date of the new determination; or
  - v) The date of the amendment from the old to the new determination.
- f) Any determination that has been made is deemed to be correct but subject to appeal to the Court. Therefore, any amount due as a result of such a determination remains payable for as long as such a determination remains in force [Section 47(9)(b)].
- g) To determine the classification of goods between Harmonised System headings clients must apply a three (3) stage process:
  - i) **Firstly, ascertain the meaning of the words** used in the headings and relative section as well as the chapter notes, which may be relevant to the classification of the goods concerned. Schedule 1 Part 1:
    - A) Has general application, meaning that it was not intended to deal with a particular trade.
    - B) Is subject to the ordinary recognised principles of statutory interpretation -
      - I) The most important rule in this regard is to give words their ordinary grammatical meaning, unless the context or the subject clearly shows that they were used in a different sense.
      - II) Definitions assigning specific meanings to words and expressions in legislation, or as a result of case law, must be adhered to unless the context otherwise indicated.
  - ii) **Secondly, considers the nature** and characteristics of the goods.
  - iii) **Thirdly, select the heading** which is most appropriate to the goods, taking the relevant headings, as well as the section and chapter notes into consideration, which must be interpreted in conformity with the Explanatory Notes:
    - A) Rules of classification are used to determine the correct tariff heading. There are six (6) general rules for the interpretation of the Harmonised System, which must be applied in a strict hierarchical order. The rules are an integral part of the Explanatory Notes providing for a uniform application of the Harmonised System. The six (6) rules are:

#	APPLICATION
1	General Rule
2(a)	Incomplete or unfinished, unassembled or disassembled goods
2(b)	Mixtures or combinations
3(a)	Two (2) or more combinations - Most specific
3(b)	Two (2) or more combinations - Essential character
3(c)	Two (2) or more combinations - Last in numerical order
4	Most akin (alike)
5(a)	Special containers
5(b)	Packing materials and containers
6	Subheading texts, notes and rules 1 to 5 above

- B) The first five (5) rules relate to the 4-digit headings and the last rule relates to classification in the 5- or 6-digit subheadings of the Harmonised System.

## 2.3 Record keeping

- a) Clients must keep documentation for record purposes for a period of five (5) years:
- i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
  - ii) Any data related to such documents created by means of a computer.
- b) 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).
- c) Every client must produce such books, accounts and documents on demand.
- d) In every instance a report by the Excise Officer is to be placed on record, detailing all that transpired at the examination, for future reference if required.

## 2.4 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 recipient or importer liable to, as provided for in the Act:
- i) Monetary penalties;
  - ii) Criminal prosecution; and/or
  - iii) Suspension or cancellation of registration, license or accreditation.

## 2.5 Appeals 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 SC-CC-24.
- b) If clients disagree with a decision of any appeal committee their recourse will be to lodge an application for Alternative Dispute Resolution (ADR) 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.
- c) Should clients wish to appeal any decisions in terms of Value-Added Tax (VAT) penalties, they are directed to the provisions of Sections 215 to 220 of the Tax Administration Act No. 28 of 2011 for the percentage based penalty and Section 224 of the Tax Administration Act No. 28 of 2011 for the understatement penalty. In this regard, please consult the SARS website or nearest SARS BO.

### 3 PRACTICE

#### 3.1 General Rules for the interpretation of the Harmonised System

- a) The client must apply the General Rules of Interpretation, in a sequential order; therefore, Rule 1 takes precedence over the remaining rules. The client must verify if Rule 1 can be used to classify the goods concerned:
- i) The Explanatory Notes to the Harmonised System groups the international trade goods into sections, chapters and sub-chapters which have been given titles indicating as concisely as possible the categories or types of goods they cover. The titles are only to be used for ease of reference and have no legal bearing on classification.
  - ii) It requires that classification be determined according to the terms of the headings of the Harmonised System and any relative section or chapter notes and if the goods cannot be classified under this rule the classification must be done according to the provisions of Rules 2 to 6.
- b) The client must ask the following questions when determining the classification of goods:
- i) What am I busy classifying – what is it that needs a tariff heading?
  - ii) What material and/or substance is the commodity under review made of?
  - iii) What is the function or use of the commodity under review?
  - iv) In what form is the commodity imported or exported?
  - v) Is this the only possible classification for the commodity under review?

#### 3.2 Preparing a request for a Tariff Determination

- a) As part of the tariff determination submission, the client must:
- i) Motivate his/her interpretation of the meaning of the words used in the tariff headings and relative HS tariff section and chapter notes which the client is of the opinion may be relevant to the classification of the goods concerned;
  - ii) Consider the nature and characteristics of the goods under review; and
  - iii) Select the tariff heading which is most appropriate to the goods, taking the relevant tariff headings, as well as the HS tariff section and chapter notes into consideration, which must be interpreted in conformity with the Explanatory Notes.
- b) Manufacturers and importers of an alcoholic beverage must apply for a tariff determination as prescribed by the Rules before release, of the alcoholic beverage for home consumption of the first importation or before the removal from the Excise manufacturing warehouse for any purpose, can take place:
- i) The following information must be enclosed in the submission:
    - A) Detailed information;
    - B) Brand name;
    - C) The process of manufacture;
    - D) The ingredients used and the proportion in which they are used;
    - E) The alcoholic strength; and
    - F) Any other information as may be required by the Commissioner.
  - ii) The application must be accompanied by a certificate from the DAFF signed by the Administering Officer, confirming that the alcoholic beverage complies with Section iv(cc)(B) of the Liquor Products Act; and
  - iii) Any other particulars requested by the BO from the client.
- c) The client must ensure that the following information is available for the completion and capturing of a DA 314 by the BO:
- i) District office;
  - ii) Importer;
  - iii) Agent;
  - iv) Submission, re-submission with regards to additional information;
  - v) Consignment;

- vi) Declaration number;
  - vii) Declaration date;
  - viii) EX (name);
  - ix) Trade name of article;
  - x) Manufacturer or Supplier;
  - xi) Description of article;
  - xii) Use of article; and
  - xiii) Motivation for application.
- d) A short reason for submitting the matter for a tariff determination must be supplied by the client. The reason must be clear and adequately set out in the submission:
- i) The reasons for submitting the request must be fully motivated in terms of the Nomenclature. Reference must be made to the HS tariff section and chapter notes as well as the Explanatory notes;
  - ii) If samples and/or literature are submitted with the request it must be clearly stated:
    - A) When the sample (Refer to SE-FS-27) or literature was delivered to the Excise BO; and
    - B) To whom the parcel was addressed.
- e) The client must verify that copies of all the correspondence are forwarded to the Excise BO, to support the request. This includes any correspondence from:
- i) The Importer to Excise;
  - ii) Excise to the Importer;
  - iii) Local Manufacturer to Excise; and
  - iv) Excise to Local Manufacturer.
- f) The Excise Officer will capture and submit the electronic DA 314 through the Tariff Determination System (TDS). An e-mail notification of the submission is automatically received by Law and Policy Division (LAPD) Tariff Determination in Head Office (HO).
- g) The Admin Officer in Head Office informs the Excise Officer of the outcome of the tariff determination:
- i) The Excise Officer must inform the client in an official letter of the outcome of the application; and
  - ii) The Auditor Excise must inform the client within seven (7) days after receipt of the tariff determination of any duties or levies due to Excise in a letter of intent.
- h) The client must submit the amended declaration(s) and pay the under entry, if any.

## 4 RELATED INFORMATION

### 4.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Customs and Excise Act No. 91 of 1964:</b> Sections 47(8)(a); 47(9), 101, 101A and 107(2)(b) <b>Tax Administration Act No. 28 of 2011:</b> Sections 215 to 220 and 224
Other Legislation:	<b>Promotion of Administrative Justice Act No. 3 of 2000:</b> Section 3 and 5 <b>Promotion Of Access To Information Act No. 2 of 2000:</b> All <b>Liquor Products Act No. 60 of 1989:</b> Section iv (cc) B
International Instruments:	<b>Harmonised Tariff System:</b> Schedule 1 Part 1 <b>World Customs Organisation Harmonised System Convention:</b> All <b>Kyoto Convention General Annex Chapter 9:</b> Information, Decisions and Rulings supplied by Customs: Standards 9.1 to 9.9

## 4.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CC-24	Internal Administrative Appeal – External Policy
SC-CC-26	Alternative Dispute Resolution = External Policy
SC-DT-C-13	Refunds and Drawbacks – External Standard
SE-FS-27	Samples – External Standard

## 4.3 Quality Records

Number	Title
DA 314	Application for a Tariff Determination

## 5 DEFINITIONS AND ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution
<b>BO</b>	Branch Office
<b>DAFF</b>	Department of Agriculture, Forestry and Fisheries
<b>HO</b>	Head Office
<b>HS</b>	Harmonised System
<b>HSEN</b>	Harmonised System Explanatory Notes
<b>LAPD</b>	Law and Policy Division
<b>Schedule 1, Part 1</b>	Schedule to the Customs and Excise Act
<b>Standard</b>	Used to convey the standards mandated by legislation and the sequential steps to be followed
<b>TDS</b>	Tariff Determination System
<b>VAT</b>	Value Added Tax
<b>WCO</b>	World Customs Organisation

## 6 DOCUMENT MANAGEMENT

<b>Standard Owner</b>	Executive: Compliance Centre Operations
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