

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

SOUTH AFRICAN REVENUE SERVICE

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CUSTOMS AND EXCISE ACT, 1964

AMENDMENT OF RULES

Under sections 75 and 120 of the Customs and Excise Act, 1964 (Act 91 of 1964), the rules published in Government Notice R.1874 of 8 December 1995, are herewith amended to the extent set out in the Schedule hereto

NGOBANI JOHNSTONE MAKHUBU

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Amendment of rule 59A.01A

1. Rule 59A.01A is hereby amended by the deletion in paragraph (a) of subparagraphs (viA) and (viB).

Insertion of Part heading

2. The rules numbered 75.25 are hereby amended by the insertion of the following Part heading before rule 75.25.01:

“Part 1: Interpretation and application of provisions”.

Amendment of rule 75.25.01

3. Rule 75.25.01 is hereby amended –

(a) by the deletion of paragraph (b);

(b) by the substitution for paragraph (d) of the following paragraph:

“(d) For the purposes of rules 75.25 and any electronic 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 _–

“applicant” means a person that intends to or has submitted an electronic application, but excludes a person submitting such application on behalf of another person;

“branch front end capturing” or **“BFE capturing”**, in relation to the electronic application, means the electronic capturing by an officer at any SARS office, of information provided by the applicant as may be required for such application on the internal SARS electronic system used for purposes of processing of such applications;

[(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]** read with Note 6(a)(xi) in Part 3 of Schedule No. 6 and who is registered as contemplated in section 75(1A)(b)(ii)[.];

“diesel refund relationship” means a relationship referred to in rule 75.25.05(a);

“diesel refund relationship management system” means a system accessible through eFiling for the disclosure, confirmation or rejection of diesel refund relationships referred to in rule 75.25.05(a)(i) and (ii);

“diesel refund user segment”, in relation to the electronic application, means a segment of the electronic application completed and submitted by a person intending to register as a diesel refund user;

“electronic application for the diesel refund scheme” or **“electronic application”** means the electronic application for the diesel refund scheme accessible through eFiling, in respect of either a diesel refund user or a seller;

“registrant” means a person registered in terms of rules 75.25;

“registration profile”, in relation to a diesel refund user, means a profile referred to in rule 75.25.04;

“relationship management system” means the system established for purposes of disclosing the diesel refund relationships contemplated in rule 75.25.05(b)(i); and

“seller segment”, in relation to the electronic application, means a segment of the electronic application to be completed and submitted by a “seller” as contemplated in paragraph (a)(ix) of Note 6 in Part 3 of Schedule No. 6.”.

Insertion of Part heading and rule

3. The following Part heading is hereby inserted after rule 75.25.01:

“Part 2: Registrations and disclosure of diesel refund relationships”

Requirement relating to tax matters

75.25.01A (a) For purposes of rules 75.25 the tax matters of an applicant for registration for the diesel refund scheme and that of a registrant must be in order.

(b) The tax matters of an applicant for registration or a registrant under rules 75.25 must be considered to be in order if that applicant or registrant has no outstanding –

- (i) taxes, interest, penalties or other amounts due and payable to SARS for which he or she is liable in terms of the Act or any other tax law; or
- (ii) tax returns or other documents that must be submitted for tax purposes to SARS in terms of the Act or any other tax law.”.

Substitution of rule 75.25.02

4. The following rule is hereby substituted for rule 75.25.02:

“Registration [and recordkeeping] of [a] sellers, notification of changes in registration particulars and recordkeeping requirements

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).]** electronically –

- (i) through eFiling by submission of the electronic application and the seller segment thereof; or
- (ii) by BFE capturing at any SARS office.

(aA) When an application for registration of a seller is approved, a diesel refund client number, deemed to be the equivalent of a customs and excise client number contemplated in rule 59A.06(1), will be allocated to the registrant.

- (b) Every registered seller of eligible purchases must –
 - (i) whenever any of the particulars furnished in **[its]** the seller’s application for registration changes **[in any material way]**, promptly advise

the Commissioner **[within seven days from the occurrence of such event]** by submitting in accordance with paragraph (a) an [renewed electronic application [for registration] reflecting the changed particulars and indicating that the application serves the purpose of amending registration particulars as well as the reason for change; 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.”.

Substitution for rule 75.25.03

5. The following rule is hereby substituted for rule 75.25.03:

“Registration of [the] diesel refund users, notification of changes of registration particulars and recordkeeping requirements

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 electronically –

- (i) through eFiling by submission of the electronic application and the diesel refund user segment thereof; or
(ii) by BFE capturing at any SARS office.

(bA) Whenever an application for registration of a diesel refund user is approved, a diesel refund client number, deemed to be the equivalent of a customs and excise client number as contemplated in rule 59A.06(1), will be allocated to the registrant.

(c) Every registered diesel refund user must, whenever any of the particulars furnished in **[its] the user's** application for registration changes **[in any material way]**, promptly advise the Commissioner **[within seven days from the occurrence of such event]** by submitting in accordance with paragraph (b) an [renewed] electronic application [for registration] reflecting the changed particulars and indicating that the application serves the purpose of amending registration particulars as well as the reason for change.".

Amendment of rule 75.25.04

6. Rule 75.25.04 is hereby amended –

(a) by the substitution for paragraph (a) of the following paragraph:

"(a) Every **[person who applies for registration in accordance with rule 75.25.03]** registered diesel refund user must create a single diesel refund user registration profile electronically [through the communicative system on the SARS website for that purpose] through eFiling reflecting the information referred to in paragraph (b)."

(b) by the substitution in paragraph (b) for subparagraph (vi) of the following subparagraph:

"(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 or, if applicable, the Global Positioning System (GPS) location of any such asset; and";

(c) by the substitution in paragraph (b) for subparagraph (vii) of the following subparagraph:

"(vii) diesel refund relationships of the diesel refund user not **[as]** disclosed or re-disclosed and confirmed **[in accordance with]** on the diesel relationship management system in terms of rule 75.25.05(b).";

(d) by the substitution for paragraph (c) of the following paragraph:

"(c) (i) Every diesel refund user must update **[its] the user's** registration profile **[by the means indicated in paragraph (a)]** through eFiling within 30 days of any change in particulars **[provided]** listed therein.

- (ii) An update effected in terms of subparagraph (i) shall be applied retrospectively for a period of up to 30 days from the date of update, but the retrospective application may not exceed the date on which the actual change occurred.”; and
- (e) by the insertion of the following paragraph after paragraph (c):
- “(d) Every diesel refund user must –
- (i) keep detailed records supporting the information listed in the user’s registration profile for a period of five years calculated from the end of the calendar year in which such records were created; and
- (ii) make any such record available for inspection on request by the Commissioner.”.

Substitution of rule 75.25.05

7. Rue 75.25.05 is hereby substituted for the following rule:

“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 rules 75.25, **[paragraph (a), “customs and excise relationships”]** “diesel refund relationships” of the diesel refund user means [includes] any business [diesel refund] relationships which the diesel refund user entered into for the purposes of any qualifying activity, such as any agreement –

[(i) agreement of the diesel refund user as a member of a partnership, joint venture or an unincorporated body of persons;]

[(ii)](i) with a seller of eligible purchases to the diesel refund user;

(ii) with another registered diesel refund user;

(iii) as a member of a partnership, joint venture or an unincorporated body of persons;

[(iii)](iv) with a transporter of eligible purchases for the diesel refund user;

[(iv)](v) **[agreement of the diesel refund user] for the purposes of hiring, leasing or chartering any asset to perform any qualifying activity; and**

[(v)](vi) [agreement of the diesel refund user] for the purposes of contracting or sub-contracting any person to perform any qualifying activity.

[(c)](b) 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)]**subject to rule 75.25.05A, disclose any diesel refund relationship contemplated in paragraph (a)(i) or (ii) on the diesel relationship management system; and
- (iA) disclose any diesel refund relationship contemplated in paragraph (a) that do not fall within the ambit of paragraph (a)(i) or (ii) by listing such relationship on the user's registration profile as required in terms of rule 75.25.04(b)(vii).
- [(ii) update the disclosure of its diesel refund relationships in terms of paragraph (a) within 30 days of any change in particulars provided therein.]**

(c) Any diesel refund relationship particulars disclosed in terms of –

- (i) paragraph (b)(i) on the diesel relationship management system, must promptly be updated by the diesel refund user in accordance with rule 75.25.05A; and
- (ii) paragraph (b)(iA), must be updated in accordance with rule 75.25.04(c) on the user's registration profile.”.

Insertion of rules

8. The following rules are hereby inserted after rule 75.25.05:

“Disclosure of diesel refund relationships on the diesel relationship management system

75.25.05A (a) A disclosure referred to in rule 75.25.05(b)(i) on the diesel relationship management system must reflect—

- (i) the name and diesel refund client number of the diesel refund user making the disclosure;
- (ii) the date of the disclosure;

- (iii) the name, diesel refund client type and diesel refund client number of the registered person who is the other party to the diesel refund relationship;
- (iv) the type of the diesel refund relationship; and
- (v) whether the disclosure relates to—
 - (aa) the conclusion of a diesel refund relationship; or
 - (bb) the cancellation of a diesel refund relationship.

(b) A disclosure referred to in paragraph (a) must be made by the diesel refund user either —

- (i) electronically on the diesel relationship management system; or
- (ii) by BFE capturing at any SARS Office.

(c) A disclosure referred to in paragraph (a) must be supported by any—

- (i) agreement entered into between the parties that governs the diesel refund relationship, if applicable; and
- (ii) other documents that may be required by the Commissioner for purposes of noting a diesel refund relationship.

(d) A diesel refund user will be deemed to have complied with rule 75.25.05(b)(i) if the disclosure is initiated by the registrant who is the other party to the diesel refund relationship.

Confirmation or rejection of diesel refund relationships by other party

75.25.05B (a) A person named in a disclosure referred to in rule 75.25.05A by the registered person initiating the disclosure of the diesel refund relationship must within 7 working days from the date of being notified by the Commissioner of the disclosure either confirm or reject the relationship on the diesel relationship management system.

(b) If a person named as the other party to a diesel refund relationship in terms of paragraph (a)—

- (i) confirms the relationship, the Commissioner must note on the system particulars of the relationship for purposes of its validation processes relating

to diesel refund claims submitted by or on behalf of the user which involve that other party; or

- (ii) rejects the relationship or fails to either confirm or reject the relationship within the prescribed timeframe, the disclosure becomes ineffective and the Commissioner may disregard the alleged relationship for purposes of such validation processes.

Fresh disclosure of diesel refund relationships upon failure by other party to confirm or reject relationship

75.25.05C (a) If the person named as the other party to a diesel refund relationship in terms of rule 75.25.05A fails to confirm or reject the relationship in accordance with rule 75.25.05B, the registered person that made the disclosure may disclose the relevant relationship to the Commissioner afresh.

(b) Rules 75.25.05A and 75.25.05B apply with any necessary changes the context may require to a fresh disclosure in terms of paragraph (a)."

Insertion of Part

9. The following Part is hereby inserted after rule 75.25.05C:

"Part 3: Transitional arrangements regarding applications in preparation for implementation of new diesel refund scheme

Special transitional arrangement for submission and consideration of diesel refund registration applications in preparation for implementation of new diesel refund scheme

75.25.05D (a) For the purposes of this transitional arrangement –
"application" means an application for registration as set out in Part 2 of these rules for the purposes of participating in the new diesel refund scheme;

"current diesel refund scheme" means the mechanism in place at the date of publication of this transitional arrangement, whereby diesel refunds are granted in

respect of distillate fuel that is purchased and used by diesel refund users as prescribed in Note 6 in Part 3 of Schedule No. 6;

“**effective date**” means the date to be determined by Notice in the Government Gazette when –

- (a) section 16(1)(a) and 16(1)(e) of The Tax Administration Amendment Act, 2017 (Act No. 13 of 2017), and rules 75.25 come into effect; and
- (b) amendments to Note 6 in Part 3 Schedule No. 6 as published in Government Gazette No. 46056 through Notice No. R. 1893 dated 18 March 2022 come into effect; and

“**new diesel refund scheme**” means the new mechanism established by rules 75.25 read with Note 6 in Part 3 Schedule No. 6, as amended by Government Gazette No. 46056 through Notice No. R. 1893 dated 18 March 2022, whereby diesel refunds will, after the effective date, be granted in respect of distillate fuel that is purchased and used by diesel refund users as prescribed in that Note.

(b) Applications may be –

- (i) submitted before the effective date, but only as from a date determined and published by the Commissioner on the SARS website; and
- (ii) considered and dispensed with by the Commissioner before the effective date.

(c) (i) For the purposes of paragraph (b), the submission and consideration of, and dispensing with, applications will take place as if the new diesel refund scheme is already in effect, subject to subparagraph (ii).

(ii) No registration approved in terms of paragraph (b) has any effect for the purposes of claiming refunds or otherwise participating in the new diesel refund scheme before the effective date.

(d) A person aggrieved by the outcome of an application contemplated in paragraph (b) may utilize internal administrative appeal procedures set out in the rules under section 77H and alternative dispute resolution procedures as set out in the rules under section 77I, as may be appropriate.

(e) The outcome of an application contemplated in paragraph (b) does not affect a registration in terms of section 75 for the current diesel refund scheme for the period for which the current diesel refund scheme remains active in terms of rule 75.25.09(c)."

Insertion of Part Heading

10. The following Part Heading is hereby inserted before rule 75.25.06:

"Part 4: Diesel refund claiming process".

Effective dates of provisions

11. (a) The amendments set out in items 1 to 8 and 10 of this Notice come into effect on the date to be determined by the Commissioner by Notice in the Government Gazette as envisaged in Government Gazette 46056 R. 1892 of 18 March 2022.

(b) The transitional arrangement dealt with in item 9 comes into effect on the date of publication of this Notice.