



1 March 2024

To: The South African Revenue Service

Lehae La SARS,
299 Bronkhorst Street
PRETORIA
0181

VIA EMAIL:

SARS: C&E_Legislativecomments@sars.gov.za

RE: COMMENTS ON THE DRAFT AMENDMENTS TO RULES UNDER SECTIONS 26, AND 120 – TRANSFER OF OWNERSHIP OF WAREHOUSED GOODS

Dear Colleagues,

We set out below brief comments from the SAIT Tax Technical department regarding the draft amendments to rules under sections 26 and 120 of the Customs and Excise Act 1964. The rules under section 26 and 120 provide that the SAD 500 or SAD 505 forms be regarded as an application for permission for the transfer of ownership of dutiable goods in a customs and excise warehouse.

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate.

Please do not hesitate to contact us should you require further information.

Yours sincerely,

SAIT Tax Technical

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All references to the legislation are to the Customs and Excise Act 91 of 1964 (the Act).

1. Insertion of Rule 26.01

1.1. Comments

- 1.1.1. In rule 26.01 reference is made to the submission of the form SAD 500 or SAD 505 reflecting the relevant transfer of ownership.
- 1.1.2. The SAD 505 is a supporting document to the SAD 500 and is not used in isolation, this is a form mainly required when a movement takes place, for example from the place of landing to a warehouse (e.g. WH aka CPC E 40-00) or from one warehouse to another warehouse removed in bond (e.g. XIB aka E 43-40) – it requires the ROG and warehouse licensee at loading to sign as well as the licensee / master / pilot at delivery. In other words, a control document for removal purposes.
- 1.1.3. A change of ownership declaration is identified by the CPC E 41-40 for example where no physical removal takes place – refer to the CPC list – all references to SAD 505 in this context should be removed from law.

1.2. Recommendation

- 1.2.1. We recommend the removal of the reference to SAD 505.

2. Insertion of Rule 26.01 (a) – (f)

2.1. Comments

- 2.1.1. This amendment only considered amending the details to such an extent that the declaration lodged with PCC “E” and RPC “41”, “47” and “48-42” should be considered as the application lodged, i.e. as a modernised aspect that the electronically lodged declaration depicting the change of ownership code will be regarded as the application and the acceptance/release thereof as the approval.
- 2.1.2. It is our view that the practicality of the other documents associated with this process as requested as per the current legislation has not been reviewed. We would recommend that such a review process take place.

3. Insertion of Rule 26.01 (a)

3.1. Comments

- 3.1.1. The goods were originally cleared for warehousing; hence the supplier was declared as well as the value. For valuation purposes the value must remain the same notwithstanding that ownership has changed.
- 3.1.2. Generally, an official order placed, or commercial invoice should be sufficient to indicate that an agreement was entered into between the two parties.
- 3.1.3. If an “agreement” is sought, it may be prudent for SARS to provide guidance on how such an agreement should be structured, in order to avoid interpretation issues with different SARS officials.



3.2. Recommendation

- 3.2.1. This requirement should be removed. Alternatively, the provision of this requirement should be reworded to indicate that the order placed by the transferee to the transferor must be provided.

4. Insertion of Rule 26.01 (b)

4.1. Comments

- 4.1.1. The transferee must in terms of legislation be a registered importer, hence SARS will maintain its entity's legal entity status on its eFiling platform. This in our view, would negate the need to indicate the particulars of that entity's particulars with every transaction.
- 4.1.2. Furthermore, at the time that goods were originally cleared for warehousing there were no requirements to reflect the destination of the goods. For this reason, we believe that there should also not be such a requirement when ownership changes to the next entity.

4.2. Recommendation

- 4.2.1. We recommend that this requirement be removed.

5. Insertion of Rule 26.01 (d)

5.1. Comments

- 5.1.1. The proposed requirements were not previously required at the time of initial import. Therefore, we would be interested to know why this requirement would be necessary at the change of ownership stage?
- 5.1.2. What will happen if the transferee intends to hold stock for local distribution and some for export? At the time of the change of ownership, the transferee may not have finalized orders because traders may replenish their stock for when needed and once ordered.

5.2. Recommendation

- 5.2.1. We recommend that this requirement be removed.

6. Insertion of Rule 26.01 (e)

6.1. Comments

- 6.1.1. We concur with the requirement to have the declaration in place in a single document to indicate the arrangement.



6.2. **Recommendation**

- 6.2.1. The allowance of the declaration to be entered into between the two parties on an agreement level and not case by case, i.e. in addition to a case-by-case basis but to be determined by the exact nature of the business.

7. Insertion of Rule 26.01 (f)

7.1. **Comments**

- 7.1.1. This is an out-dated requirement – the goods are in a warehouse from where ownership changed – all warehouses are subject to a guarantee and when removed in bond it must be conducted by the licensee of the warehouse, i.e. its bond is in place or a ROG in which case a road bond or consignor bond should cover the liabilities – the law already enables the Commissioner to request additional securities should it be a requirement.

7.2. **Recommendation**

- 7.2.1. It is recommended that this requirement be removed.

End.