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31 August 2024

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS
299 Bronkhorst Street
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Pretoria
0181

Via email: National Treasury 2024AnnexCProp@treasury.gov.za; and
SARS acollins@sars.gov.za

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2024: Customs and Excise

Dear Colleagues,

We attach the comments from the SAIT Customs and Excise Technical Work Group (**the WG**) on the proposals contained in the draft Taxation Administration Laws Amendment Bill, 2024 (**DTALAB**), as it pertains to customs and excise and related matters.

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 need further information.

Yours sincerely,

SAIT Customs and Excise Technical Work Group

Disclaimer

This document has been prepared within a limited factual and contextual framework, in order to provide technical guidance regarding a specific query relating to tax practice. This document does not purport to be a comprehensive review in respect of the subject matter, nor does it constitute legal advice or legal opinion. No reliance may be placed on this document by any party other than the initial intended recipient, nor may this document be distributed in any manner or form without the prior, written consent of the South African Institute of Taxation NPC having been obtained. The South African Institute of Taxation NPC does not accept any responsibility and/or liability, of whatsoever nature and however arising, in respect of any reliance and/or action taken on, or in respect of, this document. Copyright in respect of this document and its contents remain vested in the South African Institute of Taxation NPC.

All references to the legislation are to the Customs and Excise Act (the Customs and Excise Act) and the Value-Added Tax Act, 1991 (VAT Act) and the relevant clauses in the draft Taxation Laws Amendment Bill, 2024 (DTLAB)

1. Retrospective amendment applicable to fuel products of heading 27.10 under the Schedules to the Customs and Excise Act and the VAT Act

[Applicable provisions: Clause 41 (Schedule 1 to the Customs and Excise Act), Clause 42 (Schedule 4 to the Customs and Excise Act), Clause 43 (Schedule 5 to the Customs and Excise Act), Clause 44 (Schedule 6 to the Customs and Excise Act) and Clause 54 (Schedule 1 of the VAT Act)]

1.1. Background

1.1.1. South Africa, as a member of the World Customs Organisation (WCO) and a signatory to the Harmonised System Convention, implemented changes in the Harmonised System (HS) in 2002, introducing a new 6-digit tariff structure for "light oils and preparations" under subheading 2710.11 (now 2710.12).

1.1.2. However, a recent interpretation by some industry members suggests that products classified under this subheading should be reclassified as 2710.19 due to a distillation threshold mention in the Subheading Notes of Chapter 27, that is Note 4, which reads: For the purposes of subheading 2710.12, "light oils and preparations" are those of which 90 per cent or more by volume (including losses) distil at 210°C according to the ISO 3405 method (equivalent to the ASTM D 86 method).

1.1.3. To align with international practices and clarify that these products are not exempt from fuel levies, the government proposes to retrospectively transpose these products to subheading 2710.19, effective from 1 January 2002, as indicted in the following extract from the accompanying media statement released:

1.1.3.1. *The rates of excise duty applicable…shall be equal to the excise duty rates specified under tariff subheading 2710.11 or 2710.12 in Section… and apply as amended each year from 1 January 2002, by Notice in the Government Gazette and approved by Parliament.*

1.1.4. Thus, our understanding of this retroactive amendment is that there will be no indirect taxes owing by traders who are affected by this amendment.

1.2. The Potential Issue

1.2.1. South Africa's proposed retrospective amendment to reclassify "light oils and preparations" from subheading 2710.11 (now 2710.12) to 2710.19 poses significant challenges.

1.2.2. This change, effective from January 1, 2002, raises questions about whether importers, manufacturers and storage operators will need to apply for retrospective manufacturing/storage licenses under section 19A4.01 of the Customs and Excise Act, as well as import permits from the International Trade Administration Commission (ITAC) per the Customs Act.

1.3. We take note of the additional Note 1(g) of Chapter 27 THAT makes provision for "Distillation: 90 Per cent recovered below or at 362°C".

1.3.1. However, the implications for entities selling petroleum products to consumers

remain unclear, particularly regarding the necessity of a wholesale license from the Department of Mineral Resources and Energy. These uncertainties may complicate compliance and operational processes for affected businesses.

1.4. Requested clarification

1.4.1. We request clarification of the above uncertainties, as discussed above.

1.4.2. Furthermore, at first glance, the rationale for the retroactive amendment appears to be straightforward, as outlined in the media statement release. However, upon further analysis of the media statement release, it seems that the subheading note 4 of chapter 27 limits classification as follows:

1.4.2.1. For the purposes of subheading 2710.12, "light oils and preparations" are those of which 90 per cent or more by volume (including losses) distil at 210°C according to the ISO 3405 method (equivalent to the ASTM D 86 method)."

1.4.2.2. Consequently, we would require clarification of what would happen if the product was stilled beyond the 210°C?

1.4.2.3. Would it be correct to assume that Additional Note 1(g) of Chapter 27 will apply since it makes provision for distillation below or at 362°C and as a result tariff subheading 2710.19 will apply?

End.