



10 May 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 THE RULES UNDER SECTIONS 21(1), 60 AND 120 PERTAINING TO THE STORAGE OF IMPORTED BUNKER FUEL IN SPECIAL CUSTOMS AND EXCISE STORAGE WAREHOUSES

Dear Colleagues,

We set out below brief comments from the South African Institute of Taxation regarding the draft amendments that are proposed to Part 2 of Schedule No. 5 to the Customs and Excise Act, 1964.

In our view, the Rules are considered a means to close the long overdue gap and to provide definite guidance to an industry which is essential for our economy and trader facilitation.

On this basis, it is therefore requested that ample public sessions be held with the appropriate stakeholders to ensure that the draft Rules are finalised in an appropriate fashion so as to achieve a balance between control and trade facilitation.

The WG appreciates the opportunity to comment on these draft amendments. Please do not hesitate to contact us should you require further information.


Yours faithfully,

South African Institute of Taxation

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 <p>Customs & Excise Rule Amendments Comment Sheet</p> <p><i>South African Revenue Service</i></p>	
Email	C&E_LegislativeComments@sars.gov.za

Number of pages of comments (including this page)	11
Date	10 May 2024
Comments from	Tax Technical department
Company / Institution / Department	South African Institute of Taxation



Rule	Comment	Recommendation
21.05A.04(e)	This rule is contrary to the provisions of Rule 19.02 that essentially allow for more than one warehouse on the same premises.	It is recommended that this rule be amended to allow for different warehouses on the same premises. However, we take note of and agree that each facility be licensed as a separate entity and as with Rule 19.02 the site maps of each such facility should not overlap/ must be demarcated.
21.05A.05(a)	<p>The term 'duly entered' is frequently referred to in this draft. This term is often found in trade.</p> <p>It is our understanding that the term 'duly entered' means a declaration lodged and released by Customs (or other permissible status message). It is however considered by some to mean that a declaration was lodged within the time period and requirements of the Customs regulatory framework which includes the Manual for the Completion of declarations and does not require release of the goods.</p>	It is recommended that the term 'duly entered' be defined. Alternatively, and for purposes of providing clarity, this term should be explained with reference to each Rule that it is referred to.
21.05A.05(a)	We take note that the draft Rules in relation to Change of Ownership were circulated and commentary provided which indicated the rationale regarding the reconsideration of the draft Rules. It is therefore imperative that the draft Rules in relation to Change of Ownership be finalised prior to the implementation of these set of Rules, in order to avoid any obstacles.	We recommend that the draft rules pertaining to section 26 be finalised and that affected stakeholders be forewarned of the requirement allowing the adaption of processes. This will ensure effective compliance, as it may directly be impacted with the introduction of this set of draft Rules.



	Reference to section 26 of the draft Change of Ownership rules is used numerous times in this draft. The above clarification will therefore, for ease of review, not be repeated.	
21.05A.05(a)(i)	<p>We refer to the wording “upon payment of duty”. The literal interpretation of this wording is restrictive. At the time of clearance the declaration will reflect the payment method. The payment method may be “C” in which case it will be a payment before the declaration can be released – which is in line with the wording of the draft rule.</p> <p>The payment method may however be “D” which means that it is on a deferment account and payment will therefore only be effected on the payment date as per the agreement with SARS. Therefore, technically payment of duty due has not yet taken place at the time of removal.</p>	We propose that this Rule is enhanced to explicitly indicate ‘cleared and released under deferment of payment’ to avoid interpretive misunderstandings at a later stage between traders and SARS officers.
21.05A.06(a)	<p>A storage restriction period of 6 months, with an extension period, is imposed on this warehouse business type.</p> <p>It is noted that the current restriction time for a Section 21(1) warehouse and Section 19 warehouses is governed by Section 19(9) which reflects two years, with an extension possibility. It is considered that the provision</p>	<p>It is recommended that the rule reference Section 19(9). We propose that revised wording such as “<i>notwithstanding the provisions of Section 19(9)</i>” be used.</p> <p>This is to the extent that secondary legislation can override primary legislation in this instance.</p>



	of Section 21(2) is used to provide specific conditions, i.e. 6 months storage period.	
21.05A.06(b)	Reference is made to paragraph (d) which in turn refers to paragraph (c). The purpose of this cross references does not appear to have a definitive purpose.	We recommend that this the insertion of this Rule be reconsidered. Alternatively, for its purposes to be clearly defined.
21.05A.08(a)	This Rule refers to 'duly entered for Customs purposes'. It is unclear what the term 'duly entered for Customs purposes', entails.	It is recommended the declaration required for self-propelled storage warehouses be provided. For example, clarity must be provided regarding whether the vessel must be imported under a temporary base. Alternatively, if it is on a hire/lease agreement, how should the clearance be effected in instances where the import is not cleared in terms of Customs Procedure Category A.
21.05A.08(f)	It is common cause that upon licensing, a warehouse generally receive a prefix in its number (i.e., DBNSOS00123) which indicates the location of the warehouse. This is an SOS and its unique assigned number, in this case 00123. A warehouse is generally licensed in a particular controller's area. Therefore, reference to ' <i>A licence dealt with in this rule is issued in respect of a specific port</i> ' is not required.	We recommend the removal of the wording ' <i>A licence dealt with in this rule is issued in respect of a specific port</i> '. Focus should be placed on the regulatory controls imposed by other governing bodies.
21.05A.08(g)	The reference relates to reporting and clearances and not to licensing or licensing conditions. For example, current practice is that a licensed warehouse may only accept duly cleared and released goods.	We recommend that this Rule be removed.

21.05A.08(i)	If the rule intends to differentiate between the marine remover's vessel and the vessel used as the storage warehouse the placement of this rule is in our view, incorrect. It is also unclear how a licensed warehouse can in any manner be confused with a licensed remover because these are two distinctly different functions and licensed in terms of different legislative provisions.	We recommend that this Rule be reconsidered. Alternatively, this Rule should be dealt under the provisions of the general licensing conditions.
21.05A.09(a)	Reference is made that the <u>Excise</u> policy (Oil Industry External Policy) which outlines the manner in which prior permission to leave the port limits may be sought. Exiting/ removal from the port area is governed as a Customs function on imported goods. We are of the view that that Excise policy is not the correct document to manage this movement. The above referred policy guide does not provide guidance in this regard and hence comment cannot be provided on the feasibility of the requirement in the absence of the manner.	It is recommended that the placement of Customs matters be reconsidered. In our view, addressing these matters under the cover of an Excise policy is inappropriate. It is also recommended that all references to the Excise policy be provided for comment in conjunction with the draft rules as it would solicit a just response.
21.05A.12(d)	This process needs to be defined and then streamlined. Detail regarding who must be contacted for permission and what the timelines will be, should be provided. There is benefit in streamlining the process. For example when the declaration is lodged, the acceptance and release of the declaration should automatically be considered for the Commissioner's approval, rather than to follow the manual request	It is recommended to reconsider this Rule as per the comments provided.

	processes. This streamlined approval via the declaration route will be considered to be aligned with SARS' Vision 2024.	
21.05A.14(a)	We refer to the wording ' <i>at the land-based premises of that licensee used for purposes of the business for which the licence was issued and which is indicated on form DA 185</i> '.	We recommend that this requirement be introduced into Rule 21.05A.08 that deals with licensing requirements. It is our view that this requirement should not be addressed in the keeping of books, accounts and documents rule.
64DA.01	Reference is made to licensed marine remover (b). It is unclear the reason why a remover must be licensed to remove duty-paid stock.	This requirement may potentially create additional record keeping and controls impediments on goods which were cleared and released following relevant customs procedures.
64DA.02(a)(ii)	Our commentary relates to this Rule, however, we specifically refer to on the phrase ' <i>or from such warehouse to a foreign-going vessel for export for supply as ship stores on such vessel</i> '. The Rule does not correlate with the indicated removal to a rail carrier or a marine vessel at the harbour as indicated in Rule 21.05A.05(b).	To avoid confusion, we recommend that these Rules be aligned.
64DA.02(b)(ii)	The clearance method must be provided before the rules can take effect. In bonded movement cases the remover code is declared as well as the BND or BHR. We query how the clearance will be effected and reflected on the declaration – considering the guidance provided in the completion manual for declarations SC-CF-55-A01 in instances where a bonded removal as per the	It is recommended that procedural and system guidance be provided and opened for comment, prior to the introduction of these Rules.



	CPC and commodity takes place but is effected by means of a floating marine pipe, for example.	
64DA.03(a)	<p>Reference is made to the Oil Industry External Policy, an Excise policy that does not outline any requirements from a Customs perspective. The intended CPCs will also need to be clarified - considering as once example, agents may be added to the products. Therefore will the CPC to export be H67 as in Customs cases when exported or an CPC identifying the product as an Excise item being H68.</p> <p>It should be noted that goods imported and placed into a warehouse for export will be cleared as E 42-00 and when exported cleared as H 67-42 – relates to an old XE purpose code. Excise products when exported may be cleared as H 68-00 – relates to an old ZE purpose code</p>	It is recommended that the procedural and system guidance be provided and opened for comment prior to the introduction of the rules.
64DA.03(b)(ii)	It is unclear why a 7-day period is provided for fuel to remain in the remover's vessel, because the supply to a foreign going vessel should be for a specified quantity which is cleared from a warehouse or to a warehouse and must be delivered accordingly. The remover's vessel is not a retention facility.	We request that clarification be provided in this regard.
64DA.04(b)	It is unclear why the same vessel may not be used to remove both bonded and duty-paid bunker fuel, albeit not at the same time. The remover will have the necessary records of the stock that was drawn and whether it is bonded or duty paid.	<p>We request that clarification be provided in this regard.</p> <p>Furthermore, clarity is still required regarding the reason why duty-paid stock must be removed by a licensed remover.</p>



	It is also considered a significant capital expense to insist that a remover must have at least two vessels in operation.	
64DA.05	We propose that the process to notify the Commissioner be provided for public comment. Stakeholders have expressed difficulty in the normal ROG environment, where it was a requirement to notify the Commissioner of an incident that took place on a removal. These stakeholders did not receive appropriate assistance by SARS officials, because there is no written guidance available.	It is recommended that procedural and system guidance be provided and opened for public comment prior to the introduction of the rules.
<p><u>General comments regarding the Explanatory Notes:</u></p> <p>The Explanatory notes indicate that re-warehousing will not be permitted, although the rules do not indicate this restriction. We therefore recommend that a new rule be created to specifically restrict re-warehousing with the exceptions of instances, similar to the provision created in rule 21.05A.11. Although it should not be restricted to a sea-based warehouse.</p> <p><u>General comment:</u></p> <p>It is noted that not all references to licensing reflect both the DA 185 manual and electronic process. It is considered prudent to reflect both processes consistently throughout the rules. To comply with all the requirements specified on the electronic application process or form DA 185 and the relevant annexure, we recommend consistent use of the phrase “comply with all the requirements specified on the electronic application or form DA 185 and the relevant annexure” as per rule 21.05A.02(b)((i).</p>		
Form	Comment	Recommendation
DA185.4B4	This annexure contains all warehouses that are licensed as a SOS warehouse. The warehouse business types listed in the aforementioned annexure do not refer to a section of the Act (with the exception of one). The one	



	separately mentioned is unlike all the rest licensed in terms of Section 21(3) as a warehouse for the storage of duty-free goods for export only. All the other warehouses are thus licensed in terms of Section 21(1). It is therefore unclear why it is deemed necessary to reflect " <i>in terms of Section 21(1)</i> " for these two new warehouses on the basis that the Rules already reflected it is licensed in terms of the relevant section.	
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End.