

25 November 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: DRAFT DA 5 - LIST OF SEALABLE GOODS ON BOARD SHIP

Dear Colleagues,

Background

As per the explanatory note published, we note that Section 9 and the rules thereto provide for sealing of goods on board ship. In terms of this section, the master and every crew member shall declare all sealable goods on board the ship which are unconsumed stores of such ship and all sealable goods which are his personal property or in his possession. The form has been amended to align with legislation.

Commentary

We have thoroughly reviewed the request for commentary, and at first glance, this amendment may appear to be a minor and straightforward adjustment, which we assume the officer responsible for this alignment regarded it as.

However, as noted in our commentary that follows, it appears that the alignment with the law was not adequately cross-referenced, as it does not align with the current legal framework, nor does it appear to have taken prior amendments into account.

Furthermore, this amendment may not be the most effective approach to legislative change. Additionally, we question the necessity of this amendment, especially given that there are other more urgent and critical amendments needed to facilitate trade.

Please see our commentary below. We thank you for the opportunity to provide this commentary and look forward to engaging you hereon.

Yours sincerely

SAIT Tax Technical

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

Number of pages of comments (including this page)	6
Date	26 November 2024
Comments from	SAIT Tax Technical Department
Company / Institution / Department	South African Institute of Taxation



Rule	Comment	Recommendation
<u>General comments:</u>		
Form	Comment	Recommendation
DA 5	<ul style="list-style-type: none"> The Explanation Note on the SARS website which requests comments to the intended amendment reads as follows: <i>"Section 9 and the rules thereto provide for sealing of goods on board ship. In terms of this section, the master and every crew member shall declare all sealable goods on board the ship which are unconsumed stores of such ship and all sealable goods which are his personal property or in his possession. <u>The form has been amended to align with legislation.</u>"</i> Paragraph 2 of the draft DA5 <ul style="list-style-type: none"> On comparison it would seem that the legislation and the form are not aligned. Rule 9.02 reads <i>"<u>The master and every member of the crew shall each be allowed....</u>"</i> the rule then continues to specify the limits. 	<ul style="list-style-type: none"> We recommend that the form either be aligned to the legislation and hence allow all members of crew the same quantities or if different quantities must be allowed that the Rule 9.02 be amended accordingly.



	<ul style="list-style-type: none"> ○ These limits are aligned with the quantities the draft form allocates to the master only as per paragraph 2 of the form. ○ Other members of the crew are allocated different quantities on the form, therefore the form does not align with the legislation. 	
	<ul style="list-style-type: none"> • Reference is made to paragraph 4 of the draft DA5 <ul style="list-style-type: none"> ○ The quantities as per the paragraph are not aligned with the provisions of Rule 9.03. ○ Rule 9.03 indicates further quantities equivalent to the quantities enumerated in Rule 9.02. ○ If these quantities are per day, for example, the quantity of cigarettes allowed per day for 4 days as per Rule 9.02 were 200, hence 200 divided by 4 equals 50. ○ The allowance should therefore per day be equivalent hence 50 and <u>not</u> 30 as per the draft. ○ The draft also differentiates between the captain and other crew members which is contrary to the legislation. ○ This paragraph therefore also does not align to the current legislation 	<ul style="list-style-type: none"> • We recommend that the form either be aligned to the legislation and hence allow all members of crew the same quantities or if different quantities must be allowed that the Rule 9.02 be amended accordingly.
	<ul style="list-style-type: none"> • Paragraph 8 of the draft DA5 <ul style="list-style-type: none"> ○ The purpose of this paragraph is unclear as no reference is made to excisable products elsewhere in the form. 	<ul style="list-style-type: none"> • Relevance of the paragraph to be elaborated upon or an explicit purpose to be provided • Align the meaning of excisable goods to the current legislation.



	<ul style="list-style-type: none"> Presumably this form was last updated prior to 2012 as up to that date Schedule 1 part 2A contains a differentiation between Customs imported and Excise locally manufactured goods. At that time, excisable goods were considered locally manufactured and the part to the schedule contained 2 columns, one for excise and one for customs. Therefore, in our view paragraph 8(a) is incorrect and requires to be corrected to indicate when goods are considered excisable – which surely is not only when manufactured in South Africa. Additionally, paragraph 8(b) references ad valorem items which as per the list contains items which include items that most crew members may have in their possession as general items – for example, toiletries, apparel of leather jewellery, watches, binoculars, cameras, radio/mp3 players, cigarette lighters, cell phones etc – the treatment of these goods are left open in the form. It is therefore unclear whether these items should be recorded and if so, how? 	<ul style="list-style-type: none"> Define the purpose of listing ad valorem excise goods in part 2B and detail how this is to be treated in a specific manner or what is the relevance?
	<ul style="list-style-type: none"> The asterisk * provides for a note that reads “<i>Only in the case of ships belonging to countries where provisions is made for wine in the statutory list of provisions or rations</i>”. The asterisk is only referenced against “<i>other members of the crew</i>” in paragraphs 2 and 4. As already mentioned in the legislation, Rule 9 does not differentiate in 	<ul style="list-style-type: none"> We recommend that the form either be aligned to the legislation and hence allow all members of crew the same quantities or if different quantities must be allowed that the Rule 9.02 be amended accordingly.



	quantities between the different members of the crew which includes the master. As per the above commentary, this is not aligned with current legislation.	
	<ul style="list-style-type: none"> Reference is made to the third page of the draft DA5 <ul style="list-style-type: none"> This page as per its heading is used to reflect sealable goods per crew member, hence the requirement of the signature. It does not contain an additional means of accounting should the 4-day period be exceeded and additional sealable stores be provided; The column is inserted "<i>All non-duty-paid imported goods and all excisable goods and fuel levy goods shipped at a place in the Republic as ships' stores</i>". It would seem to make sense to include this column in the general stores as it pertains to the vessel, it does however not make sense to allocate it against the crew member. A crew member will also not know if the item is a duty-paid imported item or not. 	<ul style="list-style-type: none"> Reconsider the inclusion of the referenced column in this part of the form
<p><u>General comments:</u></p> <ul style="list-style-type: none"> It would be beneficial to provide further clarity on the completion of the form, as the current instructions may lead to varying interpretations. 		

END