

03 November 2023

To:
National Treasury
240 Madiba Street
Pretoria
0001

The South African Revenue Service
Lehae La SARS
299 Bronkhorst Street
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Via email: SARS (C&E_LegislativeComments@sars.gov.za)

**RE: CUSTOMS AND EXCISE ACT 91 OF 1964: DRAFT AMENDMENTS TO RULES
UNDER SECTION 64E AND 120**

Dear Colleagues,

We attach the comments from the SAIT Customs and Excise Working Group committee (the WG) on the amendments contained under section 64E and 120 in the Customs and Excise Act 91 of 1964 (the Act) as it pertains specifically to the proposed amendments provided for electronic submission of the application for accredited client status via e Filing.

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 Working Group Committee

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

1. Amendment of Rule 64E.05

[Applicable provisions: Schedule of the Act]

1.1. Government proposal

“(2) An application referred to in subrule (1) must be supported by–

- (a) **[the following documents, available on the SARS website and completed in accordance with any instructions provided on the website in this regard:**
 - (i) **A Customs Accreditation Self-Evaluation Questionnaire.**
 - (ii) **a Systems Questionnaire; and]**
 - (iii) a signed copy of the relevant Accreditation Agreement, available on the SARS website, uploaded on the system upon request; and
- (b) **[an application to make a booking for the competency assessment referred to in rule 64E.06; and]**
- (c) *any other supporting documents that may be necessary for proving compliance with the criteria prescribed in rule 64E.12 or 64E.13 for the relevant level of accredited client status, as may be required by the Commissioner or as indicated on the electronic application **[form].**”*

1.2. WG response

- 1.2.1. The SAQ and Systems questionnaire was unclear, and the questions were open for interpretation – therefore the move to electronic submission capturing is welcomed. However, it is unclear if the details of the two forms will be clarified as the hard copy forms phrase the questions in an ambiguous manner. If no clarification is provided for, the improvement would be one-sided.
- 1.2.2. Furthermore, in relation to the supporting documents required by paragraph (c), over time and via RLA applications the general experience is that there is a lack of consistency in relation to supporting documents. To alleviate this issue, it is proposed that the required supporting documents are clearly legislated and listed.
- 1.2.3. Notwithstanding the above, the WG has reviewed the proposed amendments and submit the following recommendations hereon.

1.3. WG recommendation

- 1.3.1. The envisaged questions in the SAQ and Systems questionnaire should be discussed with stakeholders beforehand, in order to ensure it is well understood and unambiguous as with its previous application.
- 1.3.2. Furthermore, with regards to paragraph (c), the WG suggests that all the required supporting documents should be listed in the Rule.

2. Amendment of Rule 64E.06

2.1. Government Proposal

Rule 64E.06 is hereby amended by the substitution in subrule (2) for paragraph (a) of the following paragraph:

“(a) An applicant must, subject to paragraph (b), apply for a competency assessment on e Filing in accordance with any instructions as set out on the system [a booking form published on the SARS website for this purpose, submitted together with the application for accredited client status, as is contemplated in rule 64E.05(2)(b)]”; and

(b) by the substitution for subrule (5) of the following subrule

*: “(5) **[A]** The holder of accredited client status may from time to time in order to maintain sufficient knowledge of customs laws and procedures make application for the competency test on e Filing **[by submitting the booking form –***

*(a) **at any Customs and Excise Office where a Client Relationship 4 Manager is located, as indicated on the SARS website; or (b) by e-mail directed to the e-mail address indicated on the SARS website for receipt of such applications].”.***

2.2. WG Response

2.2.1. Even though electronic means is seen as a major improvement in daily business it is also considered a major risk when eFiling is not working as it should. During the various RLA enhancements, it was frequently experienced that due to technical errors profiles could not be merged. Much alike in the AEO environment, nominations for the competency assessment could not be made.

2.2.2. It is common cause that escalation emails to SARS requesting assistance to resolve the technical errors remain unanswered and unresolved in many instances. During the CENOSF on 27 October 2023, it was indicated by the Head of RLA and AEO, Ms R Vivier that the RLA team was working 12-hour shifts. This statement is an indication of the voluminous workload and the inadequate manpower assigned to resolve all matters. Members are already affected by this inability to nominate and accept competency assessment-related requirements.

2.3. WG Recommendation

2.3.1. Therefore, the WG recommends that the implementation of the rules only take place once all the technical issues have been resolved and a dedicated escalation contact is available.

2.3.2. The dedicated contact should respond within a reasonable time and resolve the matter, unlike in the case of RLA where the email address is currently non-operational.



3. Amendment of Rule 64E.08

3.1. Government Proposal

Rule 64E.08 is hereby amended by the substitution in subrule (2) for paragraph (b) of the following paragraph:

“(b) if the holder of the accredited client status is no longer compliant with any of the criteria contemplated in paragraph (a) or if any of the information provided by the holder on the application form has subsequently changed, such holder must promptly notify the Commissioner of the non-compliance or change by submitting in terms of rule 64E.05 the electronic application [form DA 186] and the required supporting documents reflecting the relevant details in respect of the non-compliance or change; and”.

3.2. WG Response

- 3.2.1. The WG submits that this requirement may be too restrictive and does not take into consideration all client types.
- 3.2.2. It is general practice that certain client types will conduct work on behalf of a number of other Customs clients, therefore they may be more prone to non-compliance, whether by interpretation or by mistake.
- 3.2.3. An alternative to the above issue would be to define which information changes must be informed via this rule.

3.3. WG Recommendation

- 3.3.1. Mention of information provided that has changed needs to be defined – it is already a requirement to update legal entity requirements if a company's personal information i.e., name, address etc. changes. Accordingly, it should not be a requirement for one to update these changes via the AEO application process. The reason behind this is that surely all data within the SARS eFiling networks should be updated across all fields and not require constant update in various fields – if not this should be seriously considered.

4. Amendment of Rule 64E.11

4.1. Government Proposal

Rule 64E.11 is hereby amended by the substitution for subrule (2) of the following subrule:

“(2) All the provisions applicable to an application in these rules apply with the necessary changes for purposes of an application for renewal of accredited client status, provided that in the case of a SARS systems breakdown, the 30-day period will automatically be shortened by the duration of the breakdown.”



4.2. WG Response

4.2.1. The WG submits that the above insertion is wide and accordingly open to interpretation. For this reason, clarification is required, possibly a rewrite to avoid misinterpretation.

4.2.2. Furthermore, the impact of the insertion of the above statement is prejudicial to traders as the shortening of a 30-day period would be as a result of a SARS inflicted error and not the traders self-imposed error.

4.3. WG Recommendation

4.3.1. Accordingly, the WG proposes that in relation to the wide interpretation of the insertion, the wording and meaning of the inserted statement must be clarified. Furthermore, SARS should note that a trader shouldn't be impacted negatively due to an event out of their control i.e. a SARS systems error.

End