



8 July 2021

To: The South African Revenue Service

Lehae La SARS
299 Bronkhorst Street
PRETORIA
0181

Via email: SARS [c&e legislativecomments@sars.gov.za](mailto:c&e_legislativecomments@sars.gov.za)

RE: COMMENTS ON THE DRAFT RULE AMENDMENTS

Dear Colleagues,

We attach the comments from the SAIT Customs and Excise Tax Industry Work Group (the WG), on the draft amendment to rules under sections 77H and 120 of the Customs and Excise Act, 1964 (Act 91 Of 1964) that relate to internal appeals, as issued by SARS.

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

Yours faithfully,

SAIT Customs and Excise Tax Industry Work Group

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South African Revenue Service

Customs & Excise Comment Sheet

Email

C&E_legislativecomments@sars.gov.za

Number of pages of comments (including this page)	5
Date	8 July 2021
Comments from	Beatrie Gouws – Head of Strategic Development and Stakeholder Management on behalf of the SAIT Work Group.
Company / Institution / Department	The South African Institute of Taxation

Rule	Comment	Recommendation
77H.11(2)(b)	<p>It is our view that this proposed revision will be to the prejudice of the appellant as there may be insufficient segregation of powers and will be lacking an independent review of the facts at hand. The proposal therefore suggests that the appellant will have no impartial review of its case and any appeals submitted would merely be a <i>“fait de accompli”</i>.</p> <p>Regarding diesel refund appeals, it appears that the Branch Office would be <i>“marking its own homework”</i>. It is our understanding based on our experience, that the Branch Office does not fully consider comments submitted by appellants in response to letters of intent. Often the findings are merely carried through to the letter of demand and specific issues raised in these responses are disregarded or not considered at all. We would be interested to know how SARS would ensure that this trend is not carried through on the DA51 and DA52</p>	<p>To this end, we recommend that appeal committees should be as impartial and independent as possible so as to ensure that the appellant enjoys fair and reasonable administrative action as is provided for in the Promotion of Administrative Justice Act, No. 3 of 2000 (PAJA).</p> <p>Should the SARS require additional capacity to deal with the extensive amount of diesel refund disputes, we would recommend that any such appeal committee is completely independent of the audit and investigation teams as without such a specific requirement, there would be a conflict of interest.</p>



	<p>processes by the same management team that has raised the assessment in the first place?</p> <p>We have experienced cases where appeals appear to have been merely referred back to the Branch Office (auditors) and it appears that the appeal committee has not adequately applied its mind to the appeal but has rather deferred the correspondence to the audit team who appear to make the final decision and/or recommendations. This proposed revision suggests that the Branch Office will have additional power and scope to impart its interpretation and interpretation views on diesel users, leaving the appellants with no option other than to consider the provisions in Section 96 as the only independent recourse or review of decisions made on behalf of the Commissioner.</p> <p>Further, we are of the view that retrospectively applying the amendment to 1 September 2019 is grossly unfair to the appellants, as many appeals that have presently be</p>	<p>While we acknowledge that the TVOC may currently be inundated with appeals due to the numerous diesel refund assessments raised and many diesel users feeling</p>
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	<p>submitted have already been largely delayed and have exhausted any dialogue at Branch Office level. Making this revision retrospective would, in our view, allow the Branch Office to maintain its position and exhaust the appellants rights in terms of the Internal Administrative Appeal provisions.</p> <p>Furthermore, we are of the view that the appeal amount limitation of R30m is too high given that these Branch Office level appeals do not appear to be impartial and our comments with regard to fair consideration of the facts remain. This would merely fast-track the appeals into the Section 96 provisions as we are not convinced that the Branch Office would oppose its own assessments.</p>	<p>aggrieved by the findings and apparent disregard of submissions made thereon, we recommend that SARS consider allowing an independent appeal committee (perhaps another Branch Office) to consider any DA51's submitted from 1 September 2019.</p> <p>To allow for SARS to expedite the number of appeals submitted, it would in our view be reasonable to temporarily increase the threshold to R30m. This increase should be considered after a period of consolidation/ consultation to revert to the R10m threshold, so as to ensure that appellants are given fair consideration by the Branch Appeal Committee.</p>
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77H.11(3)	<p>Upon a reading of this provision, we understand that this provision endeavours to provide for the TVOC to review ALL decisions taken by the Branch Office Appeal Committee.</p> <p>Although we would welcome such a Rule, we are of the view that the proposed wording does not articulate this clearly.</p> <p>Additionally, it appears that the National Appeal Committee has a similar responsibility. It is unclear how this process would be available to the appellant, as currently there only seems to be dialogue with the Branch Office and the TVOC.</p>	<p>We welcome an impartial, independent review of appeals by the Commissioner's Office in respect of decisions taken by the Branch Offices and we recommend that the accountability for any such decisions taken should reside with the Commissioner.</p> <p>We therefore recommend and request that the wording more clearly articulates the exact levels of responsibility and accountability of the Branch Office Appeal Committee, the TVOC and the National Appeal Committee and that this should be applied more transparently.</p>
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77H.12(3)	We support and welcome the delegation of authority for the purposes of appeals to a duly qualified and appropriately senior SARS representative(s). However, this is provided that the delegation of authority is impartial and independent of the audit and investigative teams.	Any appeal committee and its delegated representatives should be factually and evidently independent from the audit and assessment teams as possible. Furthermore, the overarching accountability should reside with the Commissioner.
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