

25 November 2024

To: The National Treasury

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The South African Revenue Service

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Via email: National Treasury (2025AnnexCProp@treasury.gov.za); and
SARS (acollins@sars.gov.za)

RE: ANNEXURE C PROPOSALS: SAIT CUSTOMS AND EXCISE TECHNICAL WORK GROUP

Dear Colleagues,

We attach the Annexure C proposals from the SAIT Customs and Excise Technical Work Group (the WG), as it pertains to technical proposals for possible inclusion in Annexure C of the 2025 Budget Review.

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

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1. Legal Proposal Regarding Customs Import System Changes for the De-Minimis Rule

1.1. The legal nature of the problem

- 1.1.1. The legal nature of the issue pertains to the compliance and enforcement of customs duties and Value Added Tax (VAT) on imported goods, particularly in the context of e-commerce and clothing imports. The South African Revenue Service (SARS) has historically provided concessions for low-value imports, leading to a scenario where many importers have not fulfilled their obligations to pay the requisite customs duties and VAT.
- 1.1.2. The adoption of new guidelines by SARS, which align with the World Customs Organization (WCO) standards, has not yet been integrated into the existing Customs legislation. This discrepancy raises concerns about the enforceability and legal clarity of the customs duty framework, particularly given the non-incorporation of the new categorization of goods into the Customs and Excise Act, 1964.

1.2. A detailed factual description

- 1.2.1. On 8 August 2024, SARS issued a media release announcing substantial changes to the Customs import system, specifically addressing the treatment of goods imported via e-commerce. Historically, goods valued at less than R500 were subject to a flat rate of 20% in lieu of customs duties, with no VAT applied. However, with the introduction of the WCO Guidelines on Immediate Release, SARS has established a universal categorization of goods into four distinct categories.

- 1.2.2. Goods are classified into four categories:

Category 1 - Correspondence and Documents: No commercial value, exempt from duties and taxes, immediate release with a consolidated declaration.

Category 2 - Low Value Consignments: Below a de minimis threshold, not subject to duties and taxes, immediate clearance with appropriate documentation.

Category 3 - Low Value Dutiable Consignments: Above the de minimis threshold but below full declaration value, dutiable with a simplified declaration.

Category 4 - High Value Consignments: Not covered by the previous categories, subject to standard clearance procedures and duties.

- 1.2.3. Key changes include introducing VAT with the existing 20% flat rate of Customs duty by September 1, 2024, and reconfiguring the flat rate for the first three categories by November 1, 2024. SARS plans to leverage data and technology for trade facilitation while addressing circumventions of the de minimis rule by suppliers.
- 1.2.4. The absence of the above four categories in the current Customs legislation, particularly Section 38(1) of the Customs and Excise Act, limits clarity and compliance expectations for importers.

1.3. The nature of the business / persons impacted

- 1.3.1. The businesses impacted by the changes to the customs import system primarily include e-commerce retailers and clothing importers who rely on the importation of goods from international markets. The lack of compliance with customs duties and VAT not only affects revenue collection for the government but also creates an uneven playing field among businesses that do comply with their tax obligations. E-commerce platforms, which have seen significant growth, could face increased scrutiny and regulatory challenges if the non-compliance issue persists.
- 1.3.2. Another significant issue with the de minimis rule is that suppliers often circumvent it by using multiple house airway bills. For example, when a shipment exceeds the value threshold, suppliers may break it into smaller consignments, each documented under separate house airway bills. By ensuring each individual airway bill is below the de minimis threshold, they can benefit from the rule without incurring duties or applying the flat rate of Customs duty, thereby undermining the intended purpose of the regulation.
- 1.3.3. Furthermore, the failure to incorporate the new categorisation into legislation may lead to confusion and disputes regarding customs processes, ultimately affecting the efficiency of trade operations in the country.

1.4. Proposal

- 1.4.1. It is proposed that the four categories established by SARS be formally incorporated into both primary and secondary Customs legislation. This incorporation would enhance transparency, ensure compliance, and clarify the legal obligations of importers, thereby strengthening the overall efficacy of the customs system in South Africa. This legislative amendment would align the country's customs practices with international standards while promoting fair competition within the e-commerce and retail sectors.

End.