20 August 2024

The South African Revenue Service
Lehae La SARS,
299 Bronkhorst Street
PRETORIA
0181

VIA EMAIL: SARS: C&E_Legislativecomments@sars.gov.za

RE: COMMMENTS ON THE DRAFT AMENDMENTS TO THE RULES UNDER SECTIONS 21(1), 60 AND 120.

Dear Colleagues,

We set out below comments from the SAIT Tax Technical department, regarding the draft amendments to the rules under sections 21 and 60 relating to the creation of a new special customs and excise warehousing type for imported bunker fuel. We take note of the fact that this is the third round of public comment.

We set out our comprehensive feedback below:

We appreciate the opportunity to comment and would welcome further engagement (where appropriate).

Yours sincerely,

SAIT Tax Technical

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

Number of pages of comments (including this page)	8
Date	20 August 2024
Comments from	South African Institute of Taxation (SAIT) Tax Technical Department
Company / Institution / Department	South African Institute of Taxation

Rule	Comment	Recommendation
21.05A.01	The drafting of the legislation appears to focus on the supply of bonded fuel goods via ocean freight. No clear indication could be obtained that fuel as defined may be stored and removed via land from the land-based SOS	We recommend that clarity is provided in respects of the following: a) The way to accurately deal with bonded fuel goods at a land-based SOS; and b) Whether a newly created land-based SOS must be used for the storage of all imported bonded fuel goods.
21.05A.08(c)	The licensee operates the facility to store the bonded fuel goods. On this basis the licensee should therefore not be required to keep a record of documentation required for clearance purposes which the owner/importer and clearing agent is already required to have. Should the importer/owner also be the licensee it still should not mean the licensee in that capacity must keep the record but in the capacity as importer/owner.	We recommend that this reference be removed from the Rules

	The ITAC permit as condition of import is an importer/owner requirement.	
	The DA1 and DA3 – inward and outward reporting documents to be furnished by the master of the vessel to Customs. Customs officials then complete their portion on the form. We would like to gain clarity as to whether Customs officials will therefore complete their portion in multiple copies and provide the multiple master with copies to distribute to licensees for record keeping? It should be considered that clearance in many instances occurs before the actual arrival of a vessel at port. It is considered that the DA1 and DA3 will create more red tape for the licensee rather than to facilitate trade, for example, in the absence of the relevant form receipt or delivery of the product will not be allowed.	This requirement may give rise to cumbersome administrative hinderance. We therefore recommend that this requirement be removed from the rules.

	Sub-paragraphs (vi) to (xi) deals with documents forming part of the clearance process which are not essential for record-keeping purposes of a warehouse licensee – the responsibility to keep record of these should be retained at the importer/owner and clearing agent.	We recommend that this requirement be removed from the rules
	Sub-paragraphs (xiii) to (xiv) relate to records to be kept by the importer/owner and clearing agent.	We recommend that this requirement be removed from the rules
	The above referred sub-paragraphs were used as examples to illustrate the point that the Rules need to be reviewed and to only list the essential records as it pertains to the warehouse licensee.	We recommend that a comprehensive review of the record-keeping provisions be undertaken and that only essential documentation is included.
	The term “duly entered” is used in relation to self-propelled storage vessels. South Africa may not have vessels suitable for this purpose and therefore vessels may need to be hired or leased to serve the purpose as either the storage vessel or the MRL. For many years Customs have not provided clear mechanism to declare goods entering on hire/lease agreement (be it in a policy or SOP the mechanism). In this case a storage vessel is imported on a temporary basis (temporary import and a provisional payment as surety may be required) subject to the lease agreement which may be a number of years. The revenue must, however, be collected on the cost of hire lease agreement	We request that clear guidance legislative guidance be provided on how a hire/lease agreement declaration must be lodged

	– hence a typical duty paid (home use declaration is required). Two distinct processes in terms of declaration lodgement each with its own CPC become relevant. Typically, on a temporary import revenue cannot be collected and on a home use declaration the temporary import requirements cannot be reflected. A resolution is required in this regard, not only for purposes of these vessels but as a general concern of any anomaly within the existing Customs processes.	
21.05A.09(a)	Reference is made to compliance with all regulatory and other bodies. Customs, its law and guiding documents should empower traders to be compliant and to know what is expected from them. In our experience, traders are often provided unclear guidance regarding expectations.	We request further elaborate on the rule to include precise actions that are required from all role-players. This will assist traders to be voluntarily compliant.
21.05A.09(f)	The rule imposes on the licensee, a requirement to be in possession of the ANF or DA1 before the bonded fuel goods may be accepted as per sub-paragraph (i). The DA 1 must be provided by the master of the arriving vessel to Customs, within 24 hours of arrival. It must then be duly completed by Customs. At this stage it is unclear if Customs will complete and stamp	It is recommended that all reference to the DA1 and DA3 throughout the rules be removed as the purpose of these documents are very specific, being to report arrival and departure of vessels and not to be included as part of warehouse inventory management.

	the form there and then and provide a copy. This may also delay the acceptance process at the SOS. To accept cargo into the bonded facility the licensee had to provide approval indicating its acceptance and due entry had to take place which includes either Customs release/detention/stop, i.e. it cannot be a draft declaration or a rejected declaration	
21.05A.09(g)	We take note that this rule implies the importance of a land address as a prerequisite for establishing a sea-based SOS system.	We recommend that this rule be repositioned to an earlier section of the rule.
21.05A.09(j)	The terminology used may not be clear to all traders or potential traders. Therefore, it may be necessary to either rewrite or clarify the terms in a more accessible manner, potentially including an explanation in a policy guidance document to ensure comprehension.	More guidance is recommended to the meaning of this rule to avoid misunderstanding and inadvertent non-compliance.
21.05A.13(b)	Similar to the comments made to rule 21.05A.08(c) – only documents relevant to a warehouse licensee should be a	As indicated supra, we recommend that the rule be adjusted to only contain the relevant documentation for warehouse purposes.

	requirement to be kept and not documents that must be kept by the importer/exporter/owner and clearing agent	
21.05A.15(c)	Should bonded fuel goods move from or to a vessel a portion of the removal may be by water and another portion by land, (i.e. if removal takes place from the importing vessel to the land-based SOS and the first leg is conducted by transferring the goods by LMR (boat) up to land side from where the land removal will take place.) Thus clear legislative and procedural guidance is required in order to clarify how these clearances should be effected.	We request and recommend that clear guidance is be provided on the manner in which the declaration must be completed if the bonded fuel goods move with two means of carriage between the SOS and vessel.
64DA.02(a)	Reference is only made to the DA185 process, and not to the electronic application process.	We recommend that reference to the electronic application process also be included.
64DA.02(c)(ii)	As mentioned before – reference to the requirements to all other regulatory and other bodies need to be elaborated upon so as to enable efficient compliance	We recommend that further elaboration on the requirements by other regulatory or other bodies be provided.
64DA.03(a)	It is unreasonable to require that an LMR be exclusively contracted to a specific warehouse, as this restriction may hinder trade and lead to unfair business practices.	This provision should be removed from the rules, as it restricts trade rather than promoting the principles of free trade.

64DA.04(b)	It is acknowledged that bonded and duty-paid goods cannot be removed together from a single tank; however, it should be feasible to remove them from the same vessel if they are stored in separate tanks.	We request that this rule be adjusted to clarify that separation is required by means of a tank, holding area etc.
64DA.04(e)	We query that if an email address for SARS is utilised, will turnaround times and escalation protocols be established for cases where there is no response from the offices?	We propose that that there be an inclusion of turnaround times and escalation protocols.
64DA.05	As per R64DA.05 above	
64DA.05(a)	As per R64DA.05 above	

<u>General comments:</u>

As pertaining to the *explanatory note*.

The removal of duty-paid bonded fuel goods to a coasting vessel is unclear. Once duty has been paid the owner should be entitled to remove it by any means of their choice. We therefore recommend that duty paid stock may be moved by any remover.

<u>End.</u>

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