



28 November 2025

To: The National Treasury

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The South African Revenue Service

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**VIA EMAIL: National Treasury
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Dear Colleagues,

ANNEXURE C PROPOSALS FOR BUDGET 2026: CUSTOMS & EXCISE TECHNICAL WORK GROUP

At the outset and over and above the technical proposal made below, we wish to reiterate our commitment to engage and participate with National Treasury in investigating and finding solutions that may have unintended consequences within the customs and excise industry before such amendments are made to subsequent tax legislative cycles.

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,

Customs & Excise Technical Work Group

Disclaimer

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Unless otherwise indicated all references to legislation are to the Customs and Excise Act 91 of 1964 (the Customs and Excise Act).

1. Proposal on the Tax Ombud's Role in the Tax Administration Act, 2011

1.1. Background

- 1.1.1. This proposal looks at the Tax Ombud's role under the Tax Administration Act, No. 28 of 2011 (TAA), particularly regarding the mandate contained in Section 16(1) of the TAA. The Tax Ombud helps resolve taxpayer complaints about tax issues. However, the Tax Ombud cannot handle issues related to the Customs and Excise Act, leaving a gap for businesses involved in international trade.

1.2. The legal nature of the problem

- 1.2.1. The problem is that the TAA does not allow the Tax Ombud to address complaints related to the Customs and Excise Act. The TAA defines a Tax Act within the TAA context to exclude the Customs and Excise Act. This implies that importers, exporters, and service providers cannot get help from the Tax Ombud for issues like customs delays or disputes over duties. This gap in the law limits access to fair treatment and support for these businesses.

1.3. A detailed factual description

- 1.3.1. Traders and global trade service providers often face problems with customs, such as delays in clearing goods or disputes about duty charges. For example, an importer might experience long delays due to customs errors. Since they cannot take these issues to the Tax Ombud, they have no effective way to resolve their complaints, which can lead to financial losses and operational challenges.

1.4. The nature of the business / persons impacted

- 1.4.1. The businesses affected include importers, manufacturers, exporters, and service providers in global trade. They rely on smooth customs processes. When issues arise, it can lead to lost revenue and increased costs. Without the Tax Ombud's help, these businesses may feel less confident in the fairness of the tax and customs systems, which could discourage them from investing and trading internationally.

1.5. Proposal

- 1.5.1. To recommend that the mandate of the Tax Ombud be expanded to include assistance to taxpayers within the Customs and Excise sector.

2. Unintended Irregularity contained in Section 91 as this pertains to admission of guilt fine/penalty

2.1 The legal nature of the problem

- 2.1.1 The issue concerns whether accepting a Section 91 of the Customs Act penalty is mandatory before appealing customs decisions. SARS should make it clear that penalties in terms of section 91 of the Customs Act has two legs, (1) It is the prerogative of the Commissioner to offer such a penalty - if not offered the taxpayer most likely will face criminal charges and (2) once offered by Commissioner, the



taxpayer may accept or decline to be penalised in terms of section 91. If the trader elects not to be dealt with in terms of Section 91 of the Customs Act, the trader remains entitled to have the decisions considered in terms of the internal dispute processes as found in Chapter XA of the Customs Act.

2.2 A detailed factual description

- 2.2.1 Importers accused of customs violations face penalties under Section 91 of the Customs Act, which may be mandatory for appeal. Acceptance avoids criminal charges, while refusal could lead to prosecution. However, the issue is it is viewed as an “admission of guilt” and abiding by the Commissioner’s decision – whereas the internal administrative appeal process allows for process that does not necessarily require acceptance to Section 91.

2.3 Nature of the business impacted

- 2.3.1 The impacted businesses are importers and international traders, facing operational risks and potential financial liabilities due to uncertainty in customs compliance and penalties.

3. Section 87 Forfeiture: Reasonability of the penalty imposed

3.1 The legal nature of the problem

- 2.3.2 The issue involves whether forfeiture under Section 87 of the Customs Act is justified when goods are regularly declared and properly accounted for, for instance a genuine error is made by misapplying the relevant tariff codes for imported goods.

3.2 A detailed factual description

- 2.3.3 SARS customs may impose forfeiture as a penalty. However, if goods were consistently declared correctly without irregularities, forfeiture lacks legal or factual grounds based on the Formalito judgment (*SARS v Formalito (Pty) Ltd* [2005] ZASCA 135).

3.3 The nature of the business impacted

- 2.3.4 The affected businesses include importers and exporters who comply with customs regulations, facing potential forfeiture penalties when making a genuine customs error while doing a customs declaration and accounting for the goods.

3.4 Proposal

- 3.4.1 SARS should update its Customs Offences and Penalty Policy to ensure that the penalties imposed are reasonable.

4. Importation and distribution of Aviation Kerosene

4.1 Background

- 4.1.1 Section 19A, (licensing of customs and excise warehouses), Section 20 (removal of goods to and from warehouses) and Rules thereto, Section 37A and Rule 37A.02(d)(i) of the Customs and Excise Act.



- 4.1.2 These legislative provisions, read with the SARS Guidelines and SARS interpretation and application of the provisions, present operational, compliance, and administrative challenges for warehouse operators and traders. These include licensing complexity, movement control, and sampling procedures.

4.2 Legal nature of the problem

- 4.2.1 Special Storage Warehouse (SOS) provided in Rule 19A4.01(b)(iii) read with the Rules under Section 37A for aviation kerosene is not for general storage but for imported products not yet cleared for home consumption and intended for use in specific applications.
- 4.2.2 The use of the Multi-Product Pipeline (MPP) for deliveries to ORTIA introduces significant operational challenges, particularly regarding product intermixture, which must be accounted for under Section 37A and Rule 37A.02(d)(i) of the Customs and Excise Act. The current accounting and declaration procedures and requirements are not completely contained in the legislation or SARS guidelines which make informed compliance difficult for traders.
- 4.2.3 Section 19A & 20 and the rules to these Sections impose compliance requirements and these storage tanks must be operated under strict warehouse licensing and removal procedures, with all movements to ORTIA documented and declared. As above these requirements are not legislated for or documented on a public forum, as stated above informed compliance is difficult resulting in unintended non-compliance, SARS enforcement actions, and potential supply interruptions.
- 4.2.4 In addition, SARS do not allow multi-tenant storage in these SOS warehouses which does not consider industry requirements and results in enforced localized monopolies. Once more, these restrictions are not legislated for or documented on a public forum, making informed compliance difficult for traders.

4.3 Proposal/Recommendation

- 4.3.1 A clear policy/process to regulate turnaround times for licensing of special storage warehouses (SOS) near strategic airports and import locations.
- 4.3.2 Legislation to provide clear and complete description of the procedural measures to be followed and recognizing operational requirements and SARS control. This should include the import storage and distribution of aviation kerosene within the context of internationally accepted customs principles.
- 4.3.3 Revisiting Section 19 on licensing of customs and excise warehouses, Section 20 on removal of goods to and from warehouses and Rules thereto pertaining to aviation kerosene, Section 37 and Rule 37A.02(i) to the Customs Act.

5. Other Taxes: Ad Valorem / Indirect Tax / Consumption Tax

5.1 Background

- 5.1.1 Schedule 1 Part 2B of the Customs and Excise Act pertains to ad Valorem excise duties on locally manufactured goods or on imported goods of the same class or kind.

5.2 The legal nature of the problem



- 5.2.1 There are inconsistencies in ad valorem value calculations across various SARS branches. In addition, the matters cited take an extended period to be concluded and, in most instances, unsatisfactorily as most ad valorem registrants cannot afford the costs involved in pursuing these matters, and the cosmetics industry especially continues to face practical difficulties in this regard. This is particularly concerning as businesses often suspend trading until outstanding matters are resolved, out of concern that continuing without clarity or guidance from SARS may result in further inspections or penalties.
- 5.2.2 There is also an inconsistent understanding of Section 69 of the Customs and Excise Act, as well as the interpretation of Rule 69.01, specifically regarding the correct value to be used for calculating ad valorem duty. This includes differing interpretations of “invoice price” and “price actually paid or payable.”

5.3 A detailed factual description

- 5.3.1 Notwithstanding the difficulty pertaining in section 69 with regards the implementation of the ad valorem value in terms of “price actually paid or payable” and the “invoiced price”, we have highlighted the following:
- 5.3.1.1 The legislation does not adequately take into account the varying levels of commercial sales models and sales strategies within the cosmetics industry. As a result, Rule 69.01 is often misinterpreted and not understood. And hence requires reconsideration and potential modifications.
- 5.3.1.2 In terms of Section 36A of the Customs and Excise Act, multiple role-players within the supply chain may be required to register for ad valorem duty on the same products. This creates an unnecessary number of registered entities, resulting in additional administrative burdens for both SARS and the cosmetics industry. The legislation therefore requires streamlining.

5.4 The nature of the business / persons impacted

- 5.4.1 The businesses affected include manufacturers, exporters, wholesalers and brand owners within the cosmetics industry. These entities rely on the efficient administration of Ad Valorem duties. When issues arise, it can result in lost revenue and increased costs associated with audits, delays, and unresolved appeals.

5.5 Proposal

- 5.5.1 The cosmetics industry has engaged in discussions to develop a proposal to present to SARS and National Treasury, setting out recommendations to improve the legislation dealing with the administration of Ad Valorem duty, with the view to streamline its application, ensuring greater clarity and consistency for all parties involved.

End.