

CUSTOMS

EXTERNAL POLICY

EXCESS CURRENCY

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1 SUMMARY OF MAIN POINTS

- a) The movement of bank notes, foreign currency and Kruger Rand coins in and out of South Africa is limited to the prescribed amounts as per the Exchange Control Regulations.
- b) Every person entering or leaving South Africa from / to a country outside the Common Monetary Area (CMA) through any recognised place of arrival / departure and who has in his / her possession South African banknotes, any foreign currency or Kruger Rand coins must adhere to the requirements for importing and exporting currency.

2 POLICY

2.1 Legal provisions

- a) Although currency is included in the definition of goods, it cannot be classified in terms of the Customs tariff, which means that no duty or Value-Added Tax (VAT) is payable thereon.
- b) In terms of the Exchange Control Regulations published in terms of Section 9 of the Currency and Exchanges Act No. 9 of 1933, the control over South African's foreign currency reserves is vested in the National Treasury.
- c) No person may, except with permission granted by the National Treasury and in accordance with such conditions as the National Treasury may impose, enter into any transaction whereby capital or any right to capital is exported from South Africa.
- d) When providing foreign exchange, authorised dealers must inform their customers that:
 - i) Foreign exchange provided may only be utilised for the purpose for which it was made available;
 - ii) Foreign currency may be purchased by a traveller sixty (60) days before the date of departure; and
 - iii) Any unused foreign exchange must be resold forthwith to an authorised dealer within thirty (30) days of their return to South Africa.
- e) The Republic of Botswana does not form part of the CMA and therefore the Exchange Control requirements of non-CMA travellers entering South Africa from or leaving South Africa apply. Even in cases where business transactions are concluded between South African and Botswana enterprises (goods delivered and payment received) which results in receiving payment in cash, the same conditions will apply.

2.2 Declaration of currency

- a) Every person must declare the currency in his / her possession as follows:
 - i) On arrival, South African bank notes, foreign currency; and
 - ii) On departure South African bank notes, securities, gold and foreign currency.
- b) The traveller must complete the Traveller Card (TC-01) where applicable. The Customs Officer then generates the Traveller Declaration (TRD 1) to complete the declaration process according to SC-PA-01-11 - Traveller Processing – External Directive.
- c) Visitors utilising air transport in transit through South Africa are not obliged to declare any currency. However, once any traveller enters South Africa and passes through immigration i.e. his / her passport is endorsed as entered into South Africa, the traveller is not in transit and must make a formal declaration as per (f)(b) above.

2.3 Search and Seizure of currency

- a) Customs Officers may search for and seize currency in terms of Regulation 3(3) and 3(6) of the Exchange Control Regulations in these circumstances:

- i) When travellers have South African bank notes in excess of R 25 000 unless the traveller is going to a country within the CMA;
 - ii) Where the foreign currency is not less or equal to what was declared upon arrival by the non-resident; and
 - iii) Where the traveller does not have permission granted by the National Treasury.
- b) The traveller acknowledges the seizure of the currency by electronically signing the notification of detention on the Passenger Processing System (PPS). Refer to SC-PA-01-11.
 - c) The traveller is also requested to sign for receipt of the Audi Alteram Partem letter by signing a copy of the letter.
 - d) The traveller is allowed to leave the passenger processing area if he / she is within his / her allowances and no excess currency is found in their possession.
 - e) Exchange Regulations 3(5) and / or 3(8) states that currency seized must be forfeited for the benefit of the National Revenue Fund.
 - f) The National Treasury may in its discretion, direct that the currency seized be refunded or returned, in whole or in part, to the person from whom it was taken or who was entitled to have custody or possession thereof at the time it was detained. Excess currency seized is therefore handed over to SARB.
 - g) Migrant labourers returning to neighbouring countries are permitted to take with them reasonable amounts in the form of Rand notes representing their earnings in South Africa.
 - h) Up to fifteen (15) Kruger Rand coins may be exported provided that the coins were acquired with foreign currency brought with them into South Africa.

2.4 Record keeping

- a) The client must keep, for records purposes for a period of five (5) years:
 - i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
 - ii) Any data related to such documents created by means of a computer.
- b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Section 101 and 101A).
- c) Every client must produce such books, accounts and documents on demand.

2.5 Penalties

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence.
- b) Offences may render the client liable to, as provided for in the Act:
 - i) Monetary penalties (SC-CO-01-02); or
 - ii) Criminal prosecution; and/or
 - iii) Suspension and/or cancellation of their deferment account, registration, licence, accreditation and/or designation.

2.6 Promotion of Administrative Justice Act

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
 - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;

- ii) Imposes a duty on the State to give effect to those rights;
 - iii) Promotes an efficient administration as well as good governance; and
 - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
- b) Administrative action which significantly and unfavourably affects the rights or valid expectations of any person must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
- c) A person must be given:
- i) Written reasons of the nature and purpose of the proposed administrative action;
 - ii) A reasonable opportunity to make representations;
 - iii) A clear statement of the administrative action; and
 - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) **Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.**
- e) Before administrative action can be taken by Customs the client must be allowed the opportunity to:
- i) Obtain assistance and, in serious or complex cases, legal representation;
 - ii) Present and dispute information and arguments; and
 - iii) Appear in person.
- f) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within ninety (90) days after the date on which the client became aware of the action, request Customs to furnish written reasons for the action.
- g) Customs must within ninety (90) days after receiving the request, give the client adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

2.7 Appeals against decisions

- a) Where currency has been detained, the client and / or his / her legal representative may make representations to the Exchange Control Department of SARB as to why the whole or part of the bank notes should be refunded or returned to him / her.
- b) The Reserve Bank can be contacted on SARBFNSDEPT@resbank.co.za or (012) 313 3911 requesting the Exchange Control Department.

3 RELATED INFORMATION

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 15, 78(1), 101, 101A and 113(8)(a)-(d) Customs and Excise Rules: Rule 15
Other Legislation:	Currency and Exchanges Act No. 9 of 1933: Section 9 Exchange Control Regulations, 1961: Regulations 1, 2, 3 and 5 Financial Intelligence Centre Act No. 38 of 2001: Sections 28, 30 and 70 The Constitution of the Republic of South Africa of 1996 All The South African Revenue Service Act No. 34 of 1997: All Value-Added Tax Act No. 89 of 1991: All
International Instruments:	Kyoto Convention: Specific Annex J Chapter 1: Travellers - Standards.1-4; 10-13; 18-25 and 28-36 Recommended Practice: 5-9; 14-17; 26-27; 37 and 39

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CO-01-02	Offences and Penalties – External Policy
SC-PA-01-11	Traveller Processing – External Directive

3.3 Quality Records

Number	Title
	Audi Alteram Partem letter
TC-01	Traveller Card
TRD 1	Traveller Declaration

4 DEFINITIONS AND ACRONYMS

Act	Customs and Excise Act No. 91 of 1964
Authorised Dealer	A person authorised by the National Treasury to deal in foreign exchange
CMA	Common Monetary Area, which consist of: The Republic of South Africa; The Kingdom of Lesotho; The Republic of Namibia; and The Kingdom of Swaziland.
Foreign Currency	Any currency which is not legal tender in South Africa, including bills of exchange, letters of credit, money orders, promissory notes, traveller's cheques or any other instrument for payment in a currency unit which is not legal tender in South Africa
PPS	Passenger Processing System
SARB	South African Reserve Bank
SARS	South African Revenue Service
Securities	Shares, stock, bonds, debentures, debenture stock, unit certificates or any document conferring or containing any evidence of rights in respect of any security
National Treasury	The Minister of Finance or an officer in National Treasury who by virtue of the division of work in that Department deals with the matter on the authority of the Minister of Finance
VAT	Value-Added Tax

5 DOCUMENT MANAGEMENT

Policy Owner	Group Executive: Customs Branch
Detail of change from previous revision	Add an additional paragraph in terms of affording clients the opportunity to be heard prior to instituting any administrative action.
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