



South African Revenue Service

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1. Opening and welcome

Mrs M van Twisk

2. Draft rules - Main comments and concerns raised

- Chapter 32 : Jeanette Taljaard
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RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

- **METHODS THAT MAY BE USED TO PAY DEBT TO THE COMMISSIONER**

- Comments were received that methods other than eFiling should be allowed in the event of a system failure – rule 32.1(2)

- Accepted
- Provision will be made for payment by electronic funds transfer in the event of a systems failure

- **CONDITIONS AND REQUIREMENTS FOR PAYMENT BY CHEQUE**

- Proposals were received that a person who had been disqualified from making cheque payments due to two cheques made out to SARS being “referred to drawer” in the three years preceding the payment, should be allowed to make submissions to be allowed to pay by cheque – rule 32.3(1)(b)

- Accepted
- Provision will be made to provide for instances where good cause can be shown why cheques should be accepted

- Comments were received that cheque payments should not be limited to R50 000 per day as cheques are a secure form of payment and FICA compliant – rule 32.3(1)(d)

- Not accepted in view of SARS policy

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

CONDITIONS AND REQUIREMENTS FOR PAYMENTS BY ELECTRONIC FUNDS TRANSFER

- Questions were raised as to why only banks with SARS's preconfigured beneficiary ID may be used for payments by electronic funds transfer – rule 32.4(a)
 - These are banks that offered their internet banking services to SARS
 - The reason for using the preconfigured beneficiary ID is to ensure that misallocations do not take place
- Proposals were made that SARS should ensure that SARS is listed as a preconfigured beneficiary by all banks in order for all banks to be used – rule 32.4(a)
 - Not accepted. Client should approach relevant bank to offer their internet banking service to SARS
- Questions were raised on whether all taxpayers will be notified of the applicable financial institutions or whether the current list of institutions will apply – rule 32.4(a)
 - The applicable financial institutions are listed on the SARS website

CONDITIONS AND REQUIREMENTS FOR DEBIT OR CREDIT CARD PAYMENTS

- Questions were raised on whether only travellers and crew members are allowed to make payment by debit or credit card – rule 32.6
 - Confirmed

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

- Proposals were received that payment by debit or credit card be extended and that card facilities be made available at all Customs Cash Offices – rule 32.6(a)
 - Not accepted
- Proposals were received that acceptance of payment by card should not be restricted to the account holder, but that use and payment by authorised co-users of the card should also be accepted – rule 32.6(c)
 - Accepted. The rule will be amended to provide for authorised users
- Proposals were made that approved debit or credit cards as indicated on notice boards at relevant traveller terminals or Customs Office should also be made available on the SARS website – rule 32.6(d)
 - Will be considered

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

• APPLICATIONS FOR INSTALMENT PAYMENT AGREEMENTS

- Comments were received that the new legislation places too much emphasis on electronic submissions and that the decision to submit electronically or in hard copy should lie with the client – rule 32.8(1)(a)
 - Not accepted
 - Although the focus in the new regime is electronic submission there is provision for manual submission as set out in section 913
- Comments were received that Rule 32.8(3)(b) be expanded to provide for alternative supporting documents in instances when a debtor is a natural person who may not have financial statements or an auditor
 - Accepted. Rule will be amended to provide for other credible evidence

• CONSIDERATION OF APPLICATIONS AND NOTIFICATION OF DECISIONS

- Comments were received that a recourse should be provided for in the event that an application to pay in instalments, is refused – rule 32.9
 - Not accepted. Refusal is a “decision” in terms of the definition in section 824, and is subject to proceedings for dispute resolution referred to in section 827

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

- A comment was made with reference to rule 32.11(1) that information reflected or required on the application for instalment payment agreement and the actual instalment payment agreement is a duplication of data
 - Not accepted
 - It is a two-phase process. The application serves to determine whether the person qualifies to enter into the agreement and does not contain the actual terms of the agreement that are encompassed in the agreement itself
- Clarification was sought on whether the interest rate will be fixed for the duration of the payment plan – rule 32.11(2)(e)
 - The terms of agreement will determine whether interest rate is fixed for the period or subject to any adjustments
- Clarification was sought on whether interest should be calculated on a daily basis – rule 32.11(2)(e)
 - Yes, the calculation method is as provided for in section 701(2)

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

- **CIRCUMSTANCES IN WHICH REFUNDS MAY BE CLAIMED**

- Comments were received that provision should be made for refunds of administrative penalties and interest on such penalties where such penalties were imposed as a result of system errors – rule 32.12(1)(a)

- Not accepted as this is covered in rule 32.12(1)(a)

- Comments were received that provision should be made for refunds of administrative penalties and interest on such penalties where such penalties were imposed for inaccuracies in declarations which occurred due to business/operational practice that cannot be changed – rule 32.12(1)(a)

- Not accepted. Business practices must be aligned to Customs practices

- A comment was received that rule 32.12(1)(a)(iii) appears to only cover clerical errors made by SARS

- Not accepted as it covers errors by both client and Customs

- **APPLICATION FOR REFUND OF ADMINISTRATIVE PENALTIES, INTEREST AND OTHER PAYMENTS**

- A comment was received that delivery of hard copies to Customs must be allowed – rule 32.13(1)(a)

- Not accepted. Provision is made for manual submission in circumstances described in section 913(4)

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

- A question was raised as to whether service providers will be able to apply for refunds on their client's behalf, e.g. attorneys who are not registered / licensed with SARS – rule 32.13(2)(a)
 - Yes, section 920 provides for submission through representatives. Subrule (2)(a) will be amended to provide for representative's details
- Questions were raised as to who may authorise a person to act on behalf of an entity – rule 32.13(2)(a)(iii)
 - The representative must ensure that the person acting on behalf of the principal (the entity that the representative is representing) in terms of section 920 is in fact authorised by the entity to appoint the representative
- A question was raised as to what documentary evidence constitutes valid authority rule 32.13(b)(i)
 - The person acting on behalf of the entity can be authorised by a board resolution
- A proposal for a rule amendment was made pursuant to questions as to whether a certified copy of a letter signed by the Financial Manager or Shipping Manager constitutes valid authority, or whether a letter of authority should be signed by the Director of the company – rule 32.13(3)(b)(i)
 - Not accepted. Rules under section 920 (Part 6 of Chapter 41) specifically apply in this regard
 - In the case of a company it would be the Public Officer

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

- **TIME WITHIN WHICH APPLICATIONS FOR REFUNDS MUST BE SUBMITTED**

- A comment was received in relation to rule 32.14(2) and questions were posed as to whether there will be a “prescription period for the date of the actual payment” and whether a refund will be granted if the claim is submitted within 180 days of the decision, even if payment is made beyond the three year period

- Rule 32.14(1) governs the **general prescription period** for submission of refund applications

- Application must be submitted within **3 years from date of payment**

- **BUT**

- Rule 32.14(2) governs the timeframe for submission of the application in circumstances where the amount of the refund or the entitlement to the refund is determined / affected by dispute resolution proceedings or court action: The refund application must then be submitted within **180 days after the decision / settlement date / judgement date**

- The **date of payment plays no role** in subrule (2) scenarios

- With reference to the aforementioned clarification was sought as to whether the 3M judgement will apply

- The 3M judgement applies for purposes of interpreting the relevant provisions of the 1964 Act - once the new Acts are in force, it will not directly apply

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

- Clarification was sought on the “**date of payment**” referred to in rule 32.14(3)
 - Subrule (2) provides for the **time within which a refund application must be submitted** in circumstances where appeal or dispute resolution proceedings or court action was instituted
 - Subrule (3) **limits the entitlement to apply for a refund** in the case of penalties or payments that were **not the subject** of a dispute resolution or court action, but that **were affected** by a decision or judgement
 - Applications for refunds in respect of such “**other**” penalties or payments made, (i.e. those “affected” by a decision or judgement) are limited to payments made during the **3 years prior to the date of payment** of the penalty or payment that was the **subject of the proceedings**
 - If it was established in accordance with subrule (3) that the person is entitled to apply for a refund, the application must be submitted **within 180 days after the decision or judgement date**
- **CONSIDERATION OF APPLICATIONS**
 - Comments were received that a time period be stipulated within which an application must be validated / invalidated - rule 32.15(3)
 - Not accepted

RECOVERY OF DEBT UNDER THE CUSTOMS CONTROL ACT

- Concerns were raised that rejection of a claim on technical grounds in fact nullifies the validation of such claim. The purpose of validation is, therefore, questioned – rule 32.15(4)(c)
 - Not accepted
 - Validation is to determine whether the applicant is competent to apply and whether the application is submitted within the applicable timeframe
 - Once validated the merits of the application will be considered
 - Rejection on technical grounds means that there are rectifiable shortcomings
- A proposal was made that after invalidation or rejection of the claim on technical grounds, the applicant be granted an extension to remedy the situation or allow the applicant to reapply
 - Accepted
 - A rule to provide for re-submission of a rejected application (similar to section 71 of the CDA) within a certain period of time will be inserted
- **INTEREST PAYABLE ON REFUNDS**
 - Comments were received that it is unreasonable that clients must in almost all circumstances pay interest, but SARS does not, even in instances where payment that was not due, was wrongfully demanded by SARS – rule 32.16(1)
 - Noted – due to the principle of “pay now argue later” this will be considered

RECOVERY OR DEBT UNDER THE CUSTOMS CONTROL ACT

– Clarification was sought on whether interest paid by SARS in terms of rule 32.16(3) will be calculated on the basis of a part of a month is considered to be a month for interest calculation

- Interest must be calculated on daily balances owing, and compounded at the end of each month

- **SET-OFF OF REFUND AGAINST AMOUNT OWING**

– A suggestion was made that the wording in rule 32.18(1) to the effect that set-off must be against “...person who failed to pay an amount...” be replaced with “...person who is liable for an amount...”

- Not accepted
- It means the same. You cannot “fail” to pay unless you are liable to pay

GENERAL ENFORCEMENT FUNCTIONS

- **ISSUE OF FIREARMS TO CUSTOMS OFFICERS**

- A question was raised as to how the success of the psychometric evaluation, referred to in rule 33.5(b), would be determined
 - Comment – The success will be determined “through the evaluation”

- **SHOOTING INCIDENTS**

- A comment was made that the shooting incident report referred to in rule 33.7 should apply to official target practice training
 - Target practice is not considered to be a shooting incident, but if a person is injured or private property is damaged it will be an incident
 - A proviso will be added to rule 33.7(3) to cater for incidents during target practice
 - Also, the use of ammunition will be reported monthly as provided for in rule 33.8

GENERAL ENFORCEMENT FUNCTIONS

- **TAKING AND RECEIVING OF SAMPLES**

- A comment was made that the receipt issued where samples are taken referred to in rule 33.19(2) needs to be formalised
 - The procedure governing the taking and receiving of samples will be formalised in a standard operating procedure
- Connected to this it was also mentioned that it is not always practical to provide the customs value of the sample
 - The requirement to provide a customs value will be qualified in that it only needs to be provided where possible, considering the nature of the goods and declaration information

- **DIRECTIONS TO PERSONS TO FORMALLY APPEAR BEFORE CUSTOMS OFFICER**

- The notice to appear before a customs officer needs to be formalised
 - This has been catered for in the rule 33.20(1)(a), though the form still needs to be developed

DETENTION, SEIZURE & CONFISCATION/ P&R GOODS

- **NOTICE OF DETENTION**

- A recommendation was made that the detention notice should provide contact details in order to enquire about progress – rule 34.2
 - This is agreed with and will accordingly be provided for
- A comment was made that any action contemplated in terms of Chapter 34 should be preceded by a notice of intended action
 - This is not accepted, not all decisions can be preceded by a notice of intended action, however the process followed thereafter needs to be fair and comply with Promotion of Administrative Justice Act (PAJA)

- **REQUEST TO BE PRESENT AT INSPECTION**

- The view was expressed that a request by a person to be present at an inspection should not be necessary
 - The provision in rule 34.3(1) is merely for practical arrangements and it is accepted that the person has a right to be present at the inspection

DETENTION, SEIZURE & CONFISCATION/ P&R GOODS

- **REQUEST TO BE PRESENT AT INSPECTION**

- A recommendation was made that the reference to “within 24 hours” in rule 34.3(3) be replaced with “no-later than a reasonable time before the date and time the inspection is scheduled”.
- The 24 hour timeframe will be amended to “within one working day” to accommodate weekends and public holidays. Provision will be made for the client to indicate a preference in relation to the place where the inspection takes place unless customs directs otherwise. The short time frame ensures that inspections take place as soon as possible, reducing costs to the client

- **APPLICATION FOR TERMINATION OF SEIZURE/WITHDRAWAL OF CONFISCATION**

- A question was raised whether a broker may apply on behalf of an importer/entity for termination of seizure/ withdrawal of confiscation – rule 34.7(3) & 34.9(1)
- Provision is made for representatives in Chapter 41, however rule 34.7(2) will be amended to include representatives

DETENTION, SEIZURE & CONFISCATION/ P&R GOODS

- **APPLICATION FOR WITHDRAWAL OF CONFISCATION**

- A recommendation was made that rule 34.9(1)(a)(i) should instead read “within 30 calendar days of the date of notice of confiscation...” and not “date of confiscation”
 - There may not always be a notice of confiscation, e.g. where the owner is not known, hence the rule cannot refer to the date of the notice
- A comment was made that there is non-alignment between rules 34.7(1)(a) and 34.9(1)(a) as regards “30 days” and “30 calendar days”
 - These references will be aligned to refer to calendar days

COUNTERFEIT GOODS

- **APPLICATION BY RIGHT-HOLDERS FOR DETENTION OF COUNTERFEIT GOODS**

- A comment was received that the requirements for the “reference number” referred to in rule 36.2(2)(a) needs to be specified
 - After consideration, the requirement for the “reference number” will be removed

- **REQUESTS FOR SAMPLES OF DETAINED COUNTERFEIT GOODS**

- A recommendation was made that a timeframe be specified in rule 36.8(2)(c) within which samples of counterfeit goods will be returned
 - Where the right-holder unreasonably retains samples or does not comply with the timeframes in the Chapter, the importer can initiate a civil claim against the right-holder

RECONSIDERATION OF DECISIONS & DISPUTE RESOLUTION

- **DISPUTE RESOLUTION**

- Detailed comments were received relating to the applicability of the TAA provisions regarding objection and appeal to the Control Act and how this would work
 - The relevant provisions of the TAA will be amended to provide for the objection and appeal regime in that Act to also apply to customs matters, and for customs matters to be heard in the Tax Court. The rules of the Tax Court and Tax Board will be reviewed as part of this process
 - The current internal appeal process will fall away and the objection process as contained in the TAA will apply
 - These amendments will be published for comment

ADMINISTRATIVE PENALTIES

- **CONTENTS OF NOTICES IMPOSING FIXED AMOUNT PENALTIES**

- A question was raised whether the notification in the penalty notice informing clients that an objection may be lodged in terms of section 883 complies with PAJA
 - The process is compliant with PAJA as it does provide for a different but fair process – See sections 3(2) & 3(5) of PAJA
 - The objection is the first step in the process and cannot be initiated another way
- A comment was raised that if the penalty payment is made on the DA70, the reference to section 91 on the form would be incorrect
 - Under the Control Act, the section 91 process would not find application and thus a new form will be developed

ADMINISTRATIVE PENALTIES

- **ADMINISTRATIVE PENALTIES**

- A question was raised whether the imposition of a penalty will be regarded as provisional where an objection has been lodged
 - The imposition of a penalty is not provisional, however after the conclusion of the Chapter 37 proceedings the penalty will be reversed if the decision is in the client's favour
 - In addition, the penalty has to be paid first unless suspension of payment has been granted – see section 830(2)
- Clarification was sought whether the person indicated on the penalty notice will be the importer, clearing agent or person declaring
 - It could be any person who in terms of the Act committed the breach

ADMINISTRATIVE PENALTIES

- **CONTENTS OF NOTICES IMPOSING PROSECUTION AVOIDANCE PENALTIES**

- A concern was raised that an objection may only be lodged against the *quantum* of a prosecution avoidance penalty
 - The process is that the customs authority, based on the facts available to them, offer the client the prosecution avoidance penalty; the client in turn has the option to accept or refuse the offer. If the offer is refused the matter will proceed to court. In accepting the offer, the client agrees that the facts on which the penalty is based are correct and has to pay – The agreement reached at Nedlac states: “Constituencies agreed that a prosecution avoidance penalty would only be paid once guilt had been admitted. It was possible to appeal the quantum of the penalty.”

- **LIST OF NON-PROSECUTABLE BREACHES**

- A recommendation was made that a facility be made available to provide reasons for late submissions. A concern was raised as to how bad records will be cleared where the importer is at fault but the clearing agent is penalised
 - Extension of a timeframe can be applied for in terms of section 908 and bad records are cleared over time or through Chapter 37 proceedings

ADMINISTRATIVE PENALTIES

- **LIST OF NON-PROSECUTABLE BREACHES**

- A detailed analysis was submitted comparing the proposed penalty amounts with current penalty amounts as contained in the penalty guideline. The statement was made that the new amounts appear to be unreasonable and unfair
 - The new penalty regime provides for fixed amount penalties which double with subsequent breaches whereas the penalties under the current regime are based on a range, i.e. 25% of the under-entry with a minimum of R1 500
 - The comparison cannot really be made since the two regimes are not analogous. In the current regime more often the penalty is based on the percentage resulting in substantial penalties being imposed
 - Some of the amounts of the current penalties have not been updated since 2001 and no inflationary effect has therefore been applied
 - The new penalty amounts are under consideration with a view to reduce specific penalties

ADMINISTRATIVE PENALTIES

- **FIXED AMOUNT PENALTIES**

- A comment was received that section 877(3) only partially gives effect to the agreement that no fixed amount penalty be imposed for a breach consisting of a failure to submit full or accurate information other than information that may result in revenue prejudice if the breach was committed inadvertently and in good faith
 - This is accepted and section 877(3) will be amended by the deletion of the words “CategoryA” so that the warning referred to in the provision will apply to all categories of breaches
 - Once the amendment is effected, the following principles will apply:

ADMINISTRATIVE PENALTIES

- **FIXED AMOUNT PENALTIES**

If a person commits a breach, i.e. a failure to submit full or accurate information, other than information that may result in revenue prejudice, if the breach was committed inadvertently and in good faith; that person will as a general rule not be penalised

If that person thereafter commits the same breach, that person cannot claim that the breach was committed inadvertently and in good faith, that person will then receive a formal warning
A person will also receive a formal warning if on the first breach that person cannot prove that the breach was committed inadvertently and in good faith

If a person, after having received a formal warning, commits within three years the same breach, that person will receive a penalty as set out in the Penalty table.

JUDICIAL MATTERS

- **NOTICE OF INTENDED JUDICIAL PROCEEDINGS**
 - A comment was raised that the 30 day period referred to in rule 40.2(5) should refer to calendar days
 - This is not accepted as the enabling provision, section 896(1) refers to “calendar days”

MISCELLANEOUS MATTERS

- **DEFINITIONS**

- A recommendation was made that the definition of “digital signature” should include “of person or organisation”
 - This is not accepted as digital signature is defined in relation to an “electronic user” which in turn refers to “person”

- **CRITERIA FOR APPLICATION OF MATERIALITY PRINCIPLE**

- A request was made to reconsider the materiality percentage defining whether a person has a material interest in goods or a business, as contained in rule 41.3
 - The materiality percentage will be increased to align with the Duty Act and will be a value “exceeding 5%”

MISCELLANEOUS MATTERS

- **LOCATION OF RECORDS**

- A concern was raised regarding the necessity for a location requirement in rule 41.21
 - This is not accepted as records need to be available particularly at licensed premises or the business premises of registered person for audit and verification purposes
- Similarly the application to move and store records elsewhere than at the prescribed premises was questioned
 - This is not accepted

- **OUTSOURCING OF RECORD KEEPING FUNCTIONS**

- A question was raised as to how “*vis major*” will affect a person’s liability in terms of rule 41.26 where record keeping functions have been outsourced
 - This depends on the circumstances of each case, *vis major* cannot be avoided but the effects thereof can be limited/minimised through contingency planning

OTHER COMMENTS

COMMENT	RESPONSE
The penalty schedule should identify the responsible party for every listed administrative penalty	The provisions of the Control Act determine the person liable for the penalty.
“Failure to amend invoice when amendment is required” – ‘Amend invoice’ to be clarified – possibly incorrect term used	Accepted, phrasing to be amended
The question was asked whether customs officers operating the scanner equipment are “accredited” or “certified” to do so?	The wording will be amended to refer to appropriate training
A comment was received that only mentioning three places of entry in relation to the use of cargo scanning equipment is limiting	The rule reflects the current position and could be amended in future
The reference to the “Standards Act No 29 of 1993 needs to be amended	Accepted – the reference will be amended
A turnaround time should be detailed within which customs will respond – rule 34.3(4)	Not accepted – the turnaround time will not be contained in legislation but in a standard operating procedure

OTHER COMMENTS

COMMENT	RESPONSE
A comment was received suggesting that there be an option to warehouse P&R goods pending compliance with the legislation requiring documents or permissions	This is provided for in section 786
Reference to “section” in rule 36.2(2)(c)(iii)(dd) omitted	Accepted – reference to be included
The definition and purpose of a counterfeit depot be inserted in the Control Act	This has been provided for in section 803(1)
A question was raised whether penalties apply to natural and juristic persons	See definition of “person” in Chapter 1
Rule 39.3 has erroneously been referred to as rule 39.1	This will be amended
The use of the word “of” in rule 40.3(1) between “the Duty Act of the Excise Duty Act”, is incorrect	This will be amended
Clarification was sought as to whether a person or company needs to register to communicate electronically	Yes

OTHER COMMENTS

COMMENT	RESPONSE
The reference in rule 41.19(3) to subrule (2)(b)(i) is incorrect as this subrule does not exist	Agree – this will be amended
A question was raised whether the measures to assist in understanding systems in rule 41.20 included access to passwords, etc	In this regard rule 41.28 specifies that passwords or login credentials need to be available for audit purposes in order to access electronic records
Rule 41.25 – Recommendation that records be kept for 5 years from date of entry	In a previous round of comments the recommendation was made that the period be “5 years following the year the declaration was submitted” as the recommended wording at that point was not supported. The current recommendation is therefore in conflict with a recommendation made during a previous round. SARS accepted the prior proposal and thus the current recommendation is not accepted

THANK YOU
Questions?