

## **CUSTOMS CONTROL BILL**

**To provide for customs control of all vessels, aircraft, trains, vehicles, goods and persons entering or leaving the Republic; and for matters incidental thereto.**

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## **SCHEDULE**

### **Laws repealed**

## **PREAMBLE**

**WHEREAS** current customs legislation has not kept pace with technological advances and does not fully reflect the modern standards of the Revised Kyoto Convention and other related international instruments to which the Republic has assented;

**AND WHEREAS** the Revised Kyoto Convention and these other related international instruments serve as a model framework for modern, efficient and cost-effective customs control and simplified customs procedures and formalities;

**AND WHEREAS** there is a need for establishing a new legislative framework for the further development and reform of customs legislation in an open and democratic society;

**AND WHEREAS** mere amendment of current legislation will not achieve the desired result of modernisation and transformation of customs legislation and the simplification of customs procedures and formalities;

**AND WHEREAS** customs administration plays a critical role within the context of international trade and tourism in ensuring effective controls that secure revenue recovery, facilitation of legitimate trade and protection of society at large;

**AND WHEREAS** customs procedures and formalities should be efficient, transparent and predictable for carriers, importers, exporters, traders, travellers and other persons involved in or affected by customs procedures and formalities and not impede legitimate international trade, economic competitiveness and the movement of people and goods across national boundaries;

**AND WHEREAS** a new legislative framework must achieve a balance between effective customs control, the secure movement of goods and people into and from the Republic and the facilitation of trade and tourism;

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:-

**CHAPTER 1**  
**INTERPRETATION, APPLICATION AND ADMINISTRATION OF THIS ACT**

***Part 1: Interpretation of this Act***

**Definitions**

1. (1) In this Act, unless the context otherwise indicates –

“**accompanied baggage**”, in relation to a person entering or leaving the Republic, means all goods which a person has on or physically with him or her when processed through customs at the place of entry or exit through which that person enters or will leave the Republic;<sup>1</sup>

“**accredited**”, in relation to a person, indicates that that person is a registered person or licensee and that an accredited client status certificate has been granted in terms of Chapter 29 to that person;

“**administrative penalty**” means a penalty of any of the types stated in section 842;

“**agent**”, in relation to –

(a) an importer, means a person located in the Republic<sup>2</sup> who represents in the Republic an importer not located in the Republic;

(b) an exporter, means a person located in the Republic who represents in the Republic an exporter not located in the Republic;

(c) a carrier, means a person located in the Republic who represents in the Republic a carrier not located in the Republic; or

(d) an owner of goods, means a person located in the Republic who represents in the Republic an owner of goods not located in the Republic;

but does not include a licensed customs broker providing a service as customs broker on behalf of an importer, exporter, carrier or owner;

“**aircraft**” means a craft of any kind whatsoever which is capable of flying, whether self-propelled or not, and including its fittings and furnishings and any apparatus or equipment fitted on or to it;

“**air cargo depot**”<sup>3</sup> means premises within a customs airport or elsewhere –

(a) where air cargo is –

<sup>1</sup> This includes all items booked as a person's baggage or excess baggage irrespective of whether that baggage accompanied, or is to accompany, that person on the same vessel, aircraft, train or vehicle in which that person entered or is to leave the Republic or whether that baggage arrived, or is to be sent, on a separate vessel, aircraft, train or vehicle. It also includes any goods bought or acquired by a person from a tax free shop at the place of entry after having entered the Republic. The only condition is that the traveller must have the goods on or physically with him or her when processed through customs. Baggage which is not with the traveller when processed through customs is “unaccompanied baggage” as defined.

<sup>2</sup> See section 1(3)(a).

<sup>3</sup> Referred to in the Customs and Excise Act, 1964 as a degrouping depot.



- (i) received, packed or unpacked, or consolidated for export, or deconsolidated for delivery; and
  - (ii) temporarily stored; and
- (b) from where air cargo is –
- (i) released for home use or a customs procedure; or
  - (ii) removed to an air cargo terminal;

**“air cargo terminal”** means premises within a customs airport where air cargo is –

- (a) off-loaded from, or loaded on board, foreign-going aircraft; and
- (b) temporarily stored after being off-loaded or before being loaded;

**“air travellers terminal”** means premises within a customs airport where travellers and crew –

- (a) board, or disembark from, foreign-going aircraft; and
- (b) are processed for purposes of passenger control before boarding, or after disembarking from, foreign-going aircraft,

and includes –

- (i) all transit areas through which travellers and crew must proceed to or from foreign-going aircraft; and
- (ii) all facilities used for or in connection with the operation of the terminal;

**“air waybill”** means a document issued by an air carrier or other person for the transportation of cargo to a particular destination on board an aircraft, and which serves as proof that the carrier –

- (a) has received the cargo; and
- (b) has undertaken to transport the cargo on the terms and conditions stated in the document;

**“assessment”**, in relation to tax, means a calculation by the customs authority in terms of a tax levying Act of the amount of tax payable on taxable goods in terms of that Act;

**“bill of lading”** means a document issued by a sea carrier or other person in respect of cargo received for transportation on board a vessel and which serves as proof that the carrier or other person –

- (a) has received the cargo; and
- (b) has undertaken to transport the cargo on board a vessel on the terms and conditions stated in the document;

**“breach”**, in relation to this Act or a tax levying Act, means any of the following acts or omissions whether or not that act or omission is an offence in terms of this Act or a tax levying Act:

- (a) a contravention of or failure to comply with a provision of this Act or a tax levying Act;
- (b) a contravention of or failure to comply with a term or condition of any registration, license, accreditation, release, authorisation, permission, approval, exemption, instruction, direction or recognition issued or given in terms of this Act or a tax levying Act;
- (c) a failure to comply with a direction or instruction of the Commissioner, the customs authority or a customs officer in terms of this Act or a tax levying Act; or
- (d) an evasion of, or any act or omission aimed at evading, a provision of this Act or a tax levying Act or a term or condition of any registration, license, accreditation, release, authorisation, permission, approval, exemption, instruction, direction or recognition issued or given in terms of this Act or a tax levying Act;

**"break bulk cargo"** means general cargo transported on board a vessel, railway carriage or vehicle in separate packages or as loose items that are not packed, but excludes cargo transported in containers;

**"bulk cargo"** means a large quantity of unpacked dry or liquid homogeneous cargo transported loose in the hold or cargo space of a vessel, railway carriage or truck;

**“bulk sea cargo terminal”** means premises within a customs seaport where bulk cargo is –

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
  - (b) temporarily stored after being off-loaded or before being loaded,
- but excludes a special sea cargo terminal handling bulk cargo of a specific type;

**“bus”** means a vehicle with a seating capacity to carry more than 15 passengers;

**“calendar day”** means any one of the seven days of a week;

**“cargo”**, in relation to a vessel, aircraft, railway carriage or vehicle, means any goods on board, or to be loaded on board, or off-loaded from, a vessel, aircraft, railway carriage or vehicle, but excludes –

- (a) stores; and
- (b) the accompanied and unaccompanied baggage of travellers and crew members;

**“cargo reporter”**, in relation to cargo on board, or to be loaded on board, or off-loaded from, a vessel or aircraft, means a person who in terms of a contract of carriage concluded by that person with the consignor of the cargo or any other interested person is responsible for the delivery of the cargo, whether that person is the carrier who actually transports the cargo or a customs broker who arranged the transport of the cargo;

**“cargo status”**, in relation to cargo imported into or to be exported from the Republic by sea, means any of the following symbols used for indicating the form in which the cargo is imported or to be exported:

- (a) “FCL” for indicating that the cargo is contained in an FCL container or FCL (groupage) container;
- (b) “LCL” for indicating that the cargo is contained in an LCL container;
- (c) “Break Bulk” for indicating that the cargo is in break bulk; or
- (d) “Bulk” for indicating that the cargo is bulk;

**“carrier”** means –

- (a) a shipping line, airline or other person carrying on business by transporting goods or travellers by sea or air for reward;
- (b) a person carrying on business by transporting goods or travellers by rail for reward;
- (c) a person carrying on business by transporting goods by truck or travellers by bus for reward; or
- (d) a person who –
  - (i) conducts a business involving the selling or leasing of goods or the dealing in goods in any other manner, or the packing, repairing, reconditioning, processing or producing of goods; and
  - (ii) in the course of conducting that business transports those goods;

**“clear”** –

- (a) means submitting to the customs authority in accordance with this Act a clearance declaration complying with this Act in order to obtain the release of goods for home use or a customs procedure;<sup>4</sup> and
- (b) includes amending a submitted clearance declaration to the extent necessary to validate the declaration if the declaration does not fully comply with this Act;<sup>5</sup>

<sup>4</sup> The reference here to customs procedure includes clearance for export as the export of goods from the Republic is a customs procedure. See definition of “customs procedure”.

<sup>5</sup> See sections 171 and 172.

**“clearance declaration”** means any of the documents referred to in section 164 which may in terms of this Act be submitted to the customs authority for the purpose stated in section 163;

**“coasting vessel”** means a domestic vessel operated by a carrier and engaged in the transportation of cargo between seaports within the Republic, but excludes a foreign-going vessel which –

- (a) whilst on a voyage to its end destination in the Republic engages in such transportation during that part of the voyage in the Republic; or
- (b) whilst on a voyage to a destination outside the Republic engages in such transportation during that part of the voyage in the Republic;

**“combination sea cargo terminal”** means premises situated within a customs seaport where both break bulk cargo and cargo in containers are –

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
- (b) temporarily stored after being off-loaded or before being loaded;

**“Commissioner”** means the Commissioner for the South African Revenue Service;

**“compensating products”** means products obtained from the processing<sup>6</sup> of –

- (a) goods exported from the Republic under the outward processing procedure;
- (b) imported goods under the inward processing procedure; or
- (c) imported goods under the home use processing procedure,

and includes products not solely but at least materially, to an extent set out in the Customs Tariff or as may be prescribed by rule, obtained from such exported or imported goods;

**“confiscate”**, in relation to goods, means to divest a person of ownership of goods and to vest ownership of the goods in the state for credit of the national Revenue Fund;

**“container”** means a receptacle, holder, tank or similar movable article –

- (a) specially designed and equipped for containing goods for transport by more than one mode of transport without intermediate unloading and reloading of the contents;
- (b) of a durable nature intended for repeated use;
- (c) capable of being sealed; and
- (d) which has an internal volume of not less than one cubic metre;

and includes a demountable body;

<sup>6</sup> See definition of “processing”.

**“container depot”** means premises, whether situated within a customs seaport or elsewhere –

- (a) where containers are –
  - (i) received;
  - (ii) packed or unpacked; or
  - (iii) temporarily stored;
- (b) from where containers or the unpacked contents are delivered –
  - (i) to consignees upon clearing and release of the contents for home use; or
  - (ii) for the carrying out of a customs procedure upon clearing and release of the contents for that customs procedure; and
- (c) where goods are received for packing into containers;

**“container terminal”** means premises, whether situated within a customs seaport or elsewhere –

- (a) where packed and empty containers are received;
- (b) from where packed containers are delivered –
  - (i) to container depots;
  - (ii) directly to consignees upon clearing and release of the contents for home use; or
  - (iii) for a customs procedure upon clearing and release of the contents for that customs procedure; and
- (c) where packed and empty containers are temporarily stored after being received or before being delivered;

**“Convention on Temporary Admission”** means the Convention on Temporary Admission (Istanbul, 26 June 1990);

**“CPD carnet”** means an internationally accepted customs clearance document which –

- (a) may in terms of an international clearance arrangement be used in the Republic as a clearance declaration for clearing means of transport identified in the document for –
  - (i) the temporary admission procedure, in the case of means of transport entering and leaving the Republic under that procedure; or
  - (ii) the temporary export procedure, in the case of means of transport leaving and re-entering the Republic under that procedure; and
- (b) is covered by a guarantee for any tax that may be, or may become, payable on such means of transport;

**“Counterfeit Goods Act”** means the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);

“**court**” includes the Tax Matters Special Division of the High Court of South Africa in relation to a matter within the jurisdiction of that court;

“**crew**” or “**crew member**”, in relation to a vessel, aircraft, train, railway carriage or vehicle, means –

- (a) the on-board operator of the vessel, aircraft, train, railway carriage or vehicle; or
- (b) any other person travelling on board the vessel, aircraft, train, railway carriage or vehicle for the purpose of performing work on board the vessel, aircraft, train, railway carriage or vehicle in the course of its journey,

but excludes a person referred to in paragraph (a) or (b) on board a small vessel, light aircraft or vehicle used as a private means of transport;<sup>7</sup>

“**cross-border cable car**” means a cable car by way of which goods are imported into or exported from the Republic;

“**cross-border conveyor belt**” means a conveyor belt by way of which goods are imported into or exported from the Republic;

“**cross-border pipeline**” means a pipeline through which liquid or gas commodities are imported into or exported from the Republic;

“**cross-border railway carriage**” means a coach or wagon which –

- (a) forms part of a cross-border train that will transport goods or travellers out of the Republic, and includes a coach or wagon scheduled to form part of a cross-border train that will transport goods or travellers out of the Republic; or
- (b) forms part of a cross-border train that transported goods or travellers into the Republic, and includes a coach or wagon which did form part of a cross-border train that transported goods or travellers into the Republic and from which the goods have not yet been unloaded or the travellers have not yet disembarked;

“**cross-border train**” means a train on, or scheduled for, a voyage –

- (a) from a place outside the Republic to a destination inside the Republic; or
- (b) from a place inside the Republic to a destination outside the Republic;

<sup>7</sup> For determining when a vessel, aircraft or vehicle qualifies as a small vessel, light aircraft or vehicle used as a private means of transport, see section **870(1)(n)**.

“**cross-border transmission line**”, in relation to electricity, means a transmission line through which electricity is imported into or exported from the Republic;

“**customs airport**” means an airport designated as a place of entry or exit for aircraft and for persons and goods on board aircraft;

“**Customs and Excise Act**” means the Customs and Excise Act, 1964 (Act No. 91 of 1964);

“**customs authority**” means –

- (a) the Commissioner; or
- (b) a customs officer, but only if and to the extent that a power or duty assigned to the customs authority in terms of this Act has been delegated to that officer in terms of section 19;

“**customs broker**” means a person carrying on business in the Republic by –

- (a) submitting for reward clearance declarations for clearing goods for home use or a customs procedure on behalf of other persons, excluding –
  - (i) a person who as the registered agent in the Republic of an importer, exporter, owner or carrier of goods not located in the Republic<sup>8</sup> submits a clearance declaration on behalf of that importer, exporter, owner or carrier; or
  - (ii) a licensed carrier located in the Republic who submits a clearance declaration on behalf of a person whose goods that carrier is transporting;
- (b) arranging on behalf of other persons the receipt, delivery or transport of goods for reward;
- (c) consolidating or deconsolidating goods on behalf of other persons or arranging on behalf of other persons the consolidation or deconsolidation of goods for reward; or
- (d) handling on behalf of other persons the formalities relating to the import or export of goods for reward;

“**customs code**” means an identification number allocated by the customs authority –

- (a) in terms of section 627(1)(d) to –
  - (i) any licensed premises;
  - (ii) a licensed cross-border transmission line, pipeline, cable-car or conveyor belt;  
or
  - (iii) a licensed carrier, customs broker or stores supplier;  
or
- (b) in terms of section 601(c) to a registered person;

<sup>8</sup> See section 1(3)(a).

**“customs control”** means control in terms of this Act;

**“customs controlled area”** means –

- (a) an area, premises or facility listed in section 45(1) as a customs controlled area; or
- (b) an area designated in terms of section 45(2) as a customs controlled area;

**“Customs Duty Act”** means the Customs Duty Act, 20.. (Act No. ... of ....);

**“Customs Office”** means an office established or designated as a customs office in terms of section 14(a);

**“customs officer”** means a person designated by the Commissioner in terms of section 10(1) as a customs officer;

**“customs procedure”** means any conduct listed below involving goods imported into or to be exported from the Republic which may commence and be carried out only in accordance with this Act:

- (a) the national transit procedure;
- (b) the international transit procedure;
- (c) the transshipment procedure;
- (d) the temporary admission procedure;
- (e) the warehousing procedure;
- (f) the tax free shop procedure;
- (g) the stores procedure;
- (h) the export procedure;
- (i) the temporary export procedure;
- (j) the inward processing procedure;
- (k) the home use processing procedure; or
- (l) the outward processing procedure;

**“customs seaport”** means a seaport designated as a place of entry or exit for vessels and for persons and goods on board vessels;

**“Customs Tariff”** means the instrument issued in terms of section 9 of the Customs Duty Act;<sup>9</sup>

<sup>9</sup> In terms of section 244(2)(d) of the Customs Duty Act any reference to “Customs Tariff” must as a transitional measure be read as a reference to the Transitional Tariff contemplated in that section until a new Customs Tariff is issued in terms of section 9 of that Act.



“**customs value**”, in relation to goods, means the value of goods for customs purposes as calculated in accordance with Chapter 7 of the Customs Duty Act;

“**customs warehouse**” means a public or private warehouse;

“**damage**”<sup>10</sup>, in relation to goods, includes—

- (a) any deterioration or spoiling of goods due to any act or occurrence; or
- (b) any diminishing of, or shortages in, goods due to the inherent characteristics of the goods,

without rendering the goods commercially valueless, but excludes stealing or pilfering of goods;

“**declare**”<sup>11</sup>, in relation to goods, means –

- (a) to disclose goods to the customs authority; and
- (b) to provide the customs authority with all information relating to the goods necessary –
  - (i) to determine whether the goods are taxable;
  - (ii) to assess any tax payable on the goods;
  - (iii) to determine whether the goods must be cleared for home use or a customs procedure; and
  - (iv) to determine whether the goods are not prohibited, restricted, sectorally controlled or counterfeit goods;

“**delegation**”, in relation to a duty that must be performed, includes an instruction or request to perform or to assist in performing the duty;

“**demountable body**” means a load compartment which has no means of locomotion and which is designed to be transported on, or as a detachable part of, a specially adapted vehicle, and includes a swap-body which is a load compartment designed for combined road and rail transport;

“**depot**” means –

- (b) a container depot;
- (b) an air cargo depot; or
- (c) an international postal clearance depot;

<sup>10</sup> It is to be noted that “**damage**” retains its ordinary grammatical meaning and that the definition, by using the word “includes”, merely extends, and not replaces, the ordinary grammatical meaning.

<sup>11</sup> The notion of “declaring” goods does not imply “clearing” the goods for home use or a customs procedure. The declaration or disclosure of goods to a customs officer may (but not necessarily) lead to the clearance of the goods depending on the value of the goods, the nature of the goods, etc.

“**destroy**”, in relation to goods, includes an act or occurrence that renders goods commercially valueless;<sup>12</sup>

“**detain**”, in relation to goods, means restrict the movement or handling of the goods without the permission of the customs authority pending a decision concerning the goods in terms of this Act, a tax levying Act or other legislation applicable to the goods;

“**divert for home use**”, in relation to any of the following goods, means acquiring, purchasing, handling, transporting, storing, keeping, selling, trading in, utilising, processing, disposing of or in any other way dealing with the goods as if the goods are in free circulation:

- (a) goods imported into the Republic –
  - (i) that are required to be cleared but that have not been cleared for home use or a customs procedure; or
  - (ii) that have been cleared for home use but not released for home use; or
- (b) goods under a customs procedure, including compensating products under the inward or outward processing procedure;<sup>13</sup>

“**document**” includes –

- (a) any instrument, whether paper-based or from any other material, on or in which there –
  - (i) is writing;
  - (ii) are images; or
  - (iii) are perforations which have meaning;
- (b) any instrument from which writing, sounds or images can be reproduced or retrieved with or without the aid of any device; or
- (c) any computer, computer hardware or other device containing electronically stored information or from which electronically stored information is retrievable;

“**domestic tax**”, in relation to goods, means –

- (a) value-added tax other than value-added tax falling within the definition of “import tax”;
- (b) an excise duty, fuel levy or environmental levy other than an excise duty, fuel levy or environmental duty falling within the definition of “import tax”; or
- (c) any other tax, levy or duty imposed on goods in terms of a tax levying Act other than any tax, levy or duty falling within the definition of “import tax”;

<sup>12</sup> It is to be noted that “**destroy**” retains its ordinary grammatical meaning and that the definition, by using the word “includes”, merely extends, and not replaces, the ordinary grammatical meaning.

<sup>13</sup> Goods come under a customs procedure when cleared for that customs procedure. See provisions on commencement of customs procedures in Chapters dealing with each customs procedure.

**“domestic vessel”** means any vessel at a seaport, harbour or other place in the Republic or in the territorial waters of the Republic which is not a foreign-going vessel;

**“due date”**, in relation to –

- (a) an administrative penalty, means –
  - (i) the date on or before which the penalty must be paid in terms of Chapter **37**;  
or
  - (ii) in the case of a prosecution avoidance penalty, the date on which the time for payment of the penalty expires in terms of that Chapter; or
- (b) any other amount owed to the Commissioner in terms of this Act, means the date specified for payment in a notice demanding payment of the amount;

**“enforcement function”**, in relation to the customs authority or a customs officer, means a power or duty assigned to the customs authority in terms of this Act or assigned or delegated to a customs officer in terms of this Act –

- (a) to implement and enforce this Act or a tax levying Act; or
- (b) to assist in the implementation or enforcement of other legislation referred to in Chapter **34** or **35**;

**“enter”**, in relation to the Republic, means –

- (a) in the case of a vessel or goods or persons on board a vessel, when the vessel crosses into the territorial waters of the Republic;
- (b) in the case of an aircraft or goods or persons on board an aircraft, when the aircraft crosses into the airspace above the Republic;
- (c) in the case of a cross-border train or goods or persons on board a cross-border train, when the train crosses the border into the Republic;
- (d) in the case of a vehicle or goods or persons on board a vehicle, when the vehicle crosses the border into the Republic;
- (e) in the case of electricity, when the electricity is transmitted through a transmission line into the Republic;
- (f) in the case of goods in a cross-border pipeline, when the goods cross the border through the pipeline into the Republic;
- (g) in the case of goods on a cross-border cable car or conveyor belt, when the goods cross the border on the cable car or conveyor belt into the Republic; or
- (h) in the case of a person on foot or goods that such a person has with him or her, when that person crosses the border into the Republic;

**“exporter”<sup>14</sup>** –

- (a) in relation to goods exported or to be exported from the Republic, means the person who exported, is in the process of exporting or intends to export those goods from the Republic; or
- (b) in relation to goods exported or to be exported to the Republic, means the person who exported, is in the process of exporting or intends to export those goods to the Republic,

and includes –

- (i) a person who at the time when the goods are exported or in the process of being exported from or to the Republic –
  - (aa) is the owner of the goods;
  - (bb) carries the risk in respect of the goods; or
  - (cc) is beneficially interested in the goods in any way whatsoever;
- (ii) a person who actually transports or attempts to transport the goods out of or into the Republic, except when that person is –
  - (aa) a licensed carrier; or
  - (bb) a carrier not located in the Republic and represented in the Republic by a registered agent; or
- (iii) a person who represents, or pretends to be or to represent, a person referred to in paragraph (a) or (b) or paragraph (i) or (ii), except when that person is a licensed customs broker who as a customs broker represents a person referred to in any of those paragraphs;

**“export from the Republic”**, in relation to goods, means transporting, taking, sending or removing goods out of the Republic, subject to sections **2** and **30**;

**“export procedure”** means the customs procedure described in section **347**;

**“export tax”** means –

- (a) a duty imposed in the Customs Tariff on goods exported from the Republic; or
- (b) any other tax, levy or duty on goods exported from the Republic;<sup>15</sup>

**“export to the Republic”**, in relation to goods, means taking, sending or transporting goods from outside the Republic to a destination inside the Republic;

<sup>14</sup> “Exporter” is used in two senses in the Act. Firstly, as a person who exports goods *from* the Republic *to* another country, and, secondly, as a person who exports goods *from* another country *to* the Republic. See definitions of “export from the Republic” and “export to the Republic”.

<sup>15</sup> Such as the levy on diamonds exported from the Republic in terms of the Diamond Export Levy Act, 2007 (Act No. 15 of 2007).

**"FCL container"** means a container containing goods consigned from more than one consignor to a single consignee;

**"FCL (groupage) container"** means a container containing goods consigned from more than one consignors to more than one consignees;

**"final judgement"** means –

- (a) a judgement given or confirmed by a court of final instance; or
- (b) a judgement given by another court if the time for noting an appeal against the judgement to a higher court has expired and no appeal has been lodged;

**"fixed amount penalty"** means an administrative penalty of a type referred to in section 845;

**"foreign-going aircraft"** means –

- (a) an aircraft at an airport, landing strip or other place in the Republic if that aircraft –
  - (i) has arrived at that place in the course of a voyage from outside the Republic to a destination or destinations inside the Republic, whether that place is that destination or one of those destinations or a stopover on its way to that or any of those destinations; or
  - (ii) is scheduled to depart from that place in the course of a voyage to a destination outside the Republic, whether that place is its place of departure to that destination or a stopover or one of several stopovers in the Republic from where it departs in the course of that voyage;
- (b) an aircraft in the airspace above the Republic on a voyage referred to in paragraph (a)(i) or (ii); or
- (c) an aircraft on a voyage from a place outside the Republic to a destination outside the Republic –
  - (i) passing through the airspace above the Republic; or
  - (ii) making a stopover at any airport, landing strip or other place in the Republic;

**"foreign-going vessel"** means –

- (a) a vessel at a seaport, harbour or other place in the Republic if that vessel –
  - (i) has arrived at that place in the course of a voyage from outside the Republic to a destination or destinations inside the Republic, whether that place is that destination or one of those destinations or a stopover on its way to that or any of those destinations; or

- (ii) is scheduled to depart from that place in the course of a voyage to a destination outside the Republic, whether that place is its place of departure to that destination or a stopover or one of several stopovers in the Republic from where it departs in the course of that voyage;
- (b) a vessel in the territorial waters of the Republic on a voyage referred to in paragraph (a)(i) or (ii); or
- (c) a vessel on a voyage from a place outside the Republic to a destination outside the Republic –
  - (i) passing through the territorial waters of the Republic; or
  - (ii) making a stopover at any place in the Republic;

**“free circulation” –**

- (a) in relation to goods imported into the Republic, means –
  - (i) that the goods have been released for home use and that the release for home use was unconditional or, if conditional, has due to compliance with the condition become unconditional; or
  - (ii) that the goods fall within a category of goods referred to in section **106(1)(e)**, (f), (g), (h) or (i) and are allowed into the Republic free from customs control subject only to customs verification that the goods fall within that category;
- (b) in relation to products obtained from the processing of imported goods conditionally released for home use processing,<sup>16</sup> means that the products have been produced in compliance with the conditions subject to which the imported goods were released for home use processing and that the release of the imported goods for home use processing has due to such compliance become unconditional;
- (c) in relation to goods produced in an excise manufacturing warehouse, means that the goods have been allowed into home use in accordance with the Excise Act; or
- (d) in relation to goods produced in the Republic otherwise than as contemplated in paragraph (b) or (c), means that the goods have been produced in circumstances to which this Act and the Excise Act do not apply:

Provided that goods in free circulation by virtue of paragraph (a), (b), (c) or (d) lose their free circulation status if the goods are subsequently cleared for a customs procedure that allows goods in free circulation to be cleared for that procedure;<sup>17</sup>

**“general cargo”** means cargo of a diverse nature whether in packages or containers;

<sup>16</sup> See section **429**.

<sup>17</sup> Such as for outright export, temporary export or outward processing.

**“general sea cargo terminal”** means premises within a customs seaport where break bulk cargo is –

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
- (b) temporarily stored after being off-loaded or before being loaded;

but excludes a special sea cargo terminal handling break bulk cargo of a specific type;

**“goods”** means any wares, supplies, merchandise, articles, products, commodities, substances, documents or any other things capable of being transported, whether loose, packed, in a package or holder, containerized or in bulk, and includes –

- (a) any animals, whether dead or alive, or parts of animals;
- (b) any plants, whether dead or alive, or parts of plants;
- (c) any postal items;
- (d) any baggage of persons entering or leaving the Republic, whether accompanied or unaccompanied;
- (e) any vessels, aircraft, locomotives, railway carriages, vehicles or other means of transport, whether or not used for the transport of goods or travellers;
- (f) any transport equipment whether or not used in the transport of goods, including reusable transport equipment;
- (g) currency;
- (h) any commodity capable of being pumped through pipelines or conveyed by means of cable-car or conveyor belt; and
- (i) electricity;

**“guaranteeing association”** , in relation to –

- (a) the temporary admission procedure, means an association guaranteeing in accordance with the Convention on Temporary Admission or any agreement referred to in section **265(1)(a)(ii)** the payment of any import tax that may become payable on goods admitted into the Republic on authority of a CPD or ATA carnet; or
- (b) the temporary export procedure, means an association guaranteeing in accordance with the Convention on Temporary Admission or any agreement referred to in section **380(1)(a)(ii)** the payment of any export tax that may become payable on goods exported from the Republic on authority of a CPD or ATA carnet;

**“home use”**, in relation to imported goods, means the consumption, utilisation, processing or disposal of the goods in the Republic as goods that are no longer subject to customs control;

**“home use compensating products”** means compensating products obtained from

imported goods under the home use processing procedure;

**“home use processing”** or **“home use processing procedure”** means the customs procedure described in section **422**;

**“IDZ enterprise”** means an enterprise within an industrial development zone or part of an industrial development zone designated in terms of section **45(2)(c)** as a customs controlled area;

**“import”**, in relation to goods, means transporting, sending or bringing goods into the Republic, subject to sections **2** and **30**;

**“importer”**, in relation to goods, means a person who imports goods into the Republic, and includes –

- (a) a person who, at the time of importation –
  - (i) is the owner of the goods that are imported;
  - (ii) carries the risk in respect of the goods that are imported; or
  - (iii) is beneficially interested in any way whatsoever in the goods that are imported;
- (b) a person who actually transports or attempts to transport the goods into the Republic, except when that person is –
  - (i) a licensed carrier; or
  - (ii) a carrier not located in the Republic and represented in the Republic by a registered agent; or
- (c) a person who represents, or pretends to be or to represent, a person importing goods or referred to in paragraph (a) or (b), except when that person is a licensed customs broker who as a customs broker represents a person –
  - (i) importing goods; or
  - (ii) referred to in any of those paragraphs;

**“import tax”** means –

- (a) a duty imposed in the Customs Tariff on goods imported into the Republic, and includes an ordinary import duty, anti-dumping duty, countervailing duty and safeguard duty within the meaning of the Customs Duty Act;
- (b) value-added tax imposed on goods imported into the Republic;
- (c) an excise duty, fuel levy or environmental levy imposed on goods imported into the Republic; or
- (d) any other tax, levy or duty on goods imported into the Republic;



**“incomplete clearance declaration”** means a clearance declaration that may be used to clear goods for home use or a customs procedure in the circumstances set out in Part 1 of Chapter 23 and that does not contain all the information required to be included in a regular clearance declaration due to the unavailability of all the information;

**“industrial development zone”** means an area designated as an industrial development zone in terms of the Manufacturing Development Act, 1993 (Act No.197 of 1993);

**“inspect”**, as an action performed by a customs officer in relation to goods, includes to perform any or all of the actions referred to in section 707(3);

**“international clearance arrangement”** means an arrangement for the clearance of goods in accordance with –

- (a) the Convention on Temporary Admission; or
- (b) an agreement between the Republic and another country to regulate, otherwise than in accordance with formal clearance requirements –
  - (i) the temporary admission of goods from that country into the Republic; and
  - (ii) the temporary export of goods from the Republic to that country;

**“international postal article”** means a postal article –

- (a) posted outside the Republic for –
  - (i) delivery inside the Republic; or
  - (ii) transit through the Republic to another country; or
- (b) posted inside the Republic for delivery outside the Republic;

**“international postal clearance depot”** means premises operated by the South African Post Office for the sorting and processing of international postal items for –

- (a) delivery inside the Republic, in the case of postal items posted outside the Republic for delivery in the Republic; or
- (b) loading on board foreign-going vessels, foreign-going aircraft, cross-border railway carriages or vehicles departing from the Republic, in the case of postal items posted inside the Republic for delivery outside the Republic;

**“international transit”** or **“international transit procedure”** means the customs procedure described in section 194(2);

**“inward processed compensating products”** means compensating products –

- (a) obtained from the processing of imported goods under the inward processing procedure; and
- (b) destined for export or exported from the Republic;

**“inward processing”** or **“inward processing procedure”** means the customs procedure described in section **395**;

**“issuing association”**, in relation to –

- (a) the temporary admission procedure, means an association which in terms of the Convention on Temporary Admission or any agreement referred to in section **265(1)(a)(ii)** is authorised to issue CPD or ATA carnets for the temporary admission of goods into the Republic; or
- (b) the temporary export procedure, means an association which in terms of the Convention on Temporary Admission or any agreement referred to in section **380(1)(a)(ii)** is authorised to issue CPD or ATA carnets for the temporary export of goods from the Republic for temporary admission into another country;

**“juristic entity”** includes –

- (a) a company, close corporation or co-operative incorporated or registered in terms of legislation whether in the Republic or elsewhere;
- (b) an association, partnership or club or other body of persons of whatever description, corporate or unincorporated;
- (c) a trust or trust fund;
- (d) any entity referred to in paragraph (a), (b) or (c) in liquidation or under judicial management; and
- (e) the estate of a deceased or insolvent person;

**“land border-post”**, in relation to –

- (a) vehicles, means a road border crossing designated in terms of section **31(1)(d)** as a place of entry or exit for vehicles, and persons and goods on board vehicles; or
- (b) persons on foot, means a road or other border crossing designated in terms of section **31(1)(e)** as a place of entry or exit for persons on foot, and goods that such persons have with them;

**“LCL container”** means a container containing goods consigned from one or more consignors to more than one consignees;

**“leave”**, in relation to the Republic, means –

- (a) in the case of a vessel or goods or persons on board a vessel, when the vessel moves out of the territorial waters of the Republic;
- (b) in the case of an aircraft or goods or persons on board an aircraft, when the aircraft moves out of the airspace above the Republic;
- (c) in the case of a cross-border train or goods or persons on board a cross-border train, when the train crosses the border out of the Republic;
- (d) in the case of a vehicle or goods or persons on board a vehicle, when the vehicle crosses the border out of the Republic;
- (e) in the case of electricity, when the electricity is transmitted through a transmission line out of the Republic;
- (f) in the case of goods in a cross-border pipeline, when the goods cross the border through the pipeline out of the Republic;
- (g) in the case of goods on a cross-border cable car or conveyor belt, when the goods cross the border by way of the cable car or conveyor belt out of the Republic; or
- (h) in the case of a person on foot or goods that such a person has with him or her, when that person crosses the border out of the Republic;

**“licence”** means a licence issued by the customs authority in terms of Chapter 27;

**“licensed”** means licensed in terms of Chapter 27;

**“licensee”** means the holder of a licence;

**“lost”** or **“loss”**, in relation to goods, means that goods have become lost due to –

- (a) pilfering, theft or robbery;
- (b) falling overboard;
- (c) being left behind or forgotten somewhere;
- (d) loading on board wrong vessel, aircraft, railway carriage or vehicle;
- (e) off-loading at wrong place; or
- (f) any other specific act or occurrence other than the destruction or damage of goods;

**“manifest”** means a summary of cargo on board or to be off-loaded from a vessel, aircraft, railway carriage or vehicle at a specific place as reflected in the transport documents issued in respect of that cargo;

**“means of transport”** means a vessel, aircraft, locomotive, railway carriage or vehicle engaged in the transport of goods or persons;

**“Minister”** means the Cabinet member responsible for finance;

**“mode of transport”** means transport by sea, air, rail or road;

**“multi-modal transport”** means the transport of goods from one point to another by switching in the course of the journey from one mode of transport to another;

**“multi-purpose sea cargo terminal”** means any premises within a customs seaport handling any combination of –

- (a) general sea cargo;
- (b) special sea cargo;
- (c) bulk sea cargo; and
- (d) containers, including empty containers;

**“national transit”** or **“national transit procedure”** means the customs procedure described in section 194(1);

**“non-prosecutable breach”**, in relation to this Act, means a breach of this Act which is not an offence in terms of this Act;

**“official”**, in relation to SARS, means –

- (a) the Commissioner;
- (b) any other employee of SARS;
- (c) a person employed by another organ of state, including any institution which is not an organ of state, and seconded to SARS to work as a member of the staff; or
- (d) a person contracted by SARS to work as a member of the staff otherwise than as an employee;

**“on-board operator”** –

- (a) in relation to a vessel, aircraft or train, means a person on board the vessel, aircraft or train who is in on-board command<sup>18</sup> of the vessel, aircraft or train;
- (b) in relation to a railway carriage, means a person on board the train of which that railway carriage forms part or is scheduled to form part and who is in on-board command of the train; or
- (c) in relation to a vehicle, means the driver of the vehicle or, if the driver drives the vehicle on the instructions of another person in the vehicle, that other person;

<sup>18</sup> This refers to the master or captain of a vessel or the pilot or captain of an aircraft, etc, but excludes harbour pilots guiding vessels in a port and train pilots guiding trains on a track.

**“origin”**, in relation to goods, means the country in which the goods were produced or regarded to have been produced according to the rules of origin applicable to the goods in terms of Chapter 8 of the Customs Duty Act;

**“outright export”**, in relation to goods, means the export of goods from the Republic otherwise than under –

- (a) any of the following customs procedures:
  - (i) the international transit procedure;
  - (ii) the transshipment procedure;
  - (iii) the temporary admission procedure;
  - (iv) the temporary export procedure;
  - (v) the tax free shop procedure;
  - (vi) the stores procedure;
  - (vii) the inward processing procedure; or
  - (viii) the outward processing procedure; or
- (b) an exemption or exclusion from export clearance formalities;

**“outturn report”** means a report giving the information as may be prescribed by rule concerning –

- (a) goods –
  - (i) packed into containers, or consolidated, whether on pallets or in another way, for transportation;
  - (ii) loaded on board a vessel, aircraft, railway carriage or vehicle for transportation;
  - (iii) unloaded from a vessel, aircraft, railway carriage or vehicle; or
  - (iv) unpacked from containers or de-grouped from consolidated packages; or
- (b) empty containers unloaded from vessels or railway carriages;

**“outward processed compensating products”** means compensating products –

- (a) obtained from the processing of goods exported from the Republic under the outward processing procedure; and
- (b) imported under that procedure for home use;

**“outward processing”** or **“outward processing procedure”** means the customs procedure described in section 441;

**“owner”**, in relation to goods, includes a person holding a share in the ownership of goods;

“**ownership**”, in relation to goods, includes a share in the ownership of goods;

“**package**” means –

- (a) any wrapping or outer cover and its contents;
- (b) any bundle tied together; or
- (c) any single piece in the case of unpacked goods;

“**permissible**” –

- (a) in relation to a customs procedure, means that clearance and release of goods for that customs procedure is in the circumstances pertaining to a specific case –
  - (i) not inconsistent with this Act or a tax levying Act; and
  - (ii) authorised in the discretion of the customs authority; and
- (b) in relation to home use, means that clearance and release of goods for home use is in the circumstances pertaining to a specific case –
  - (i) not inconsistent with this Act or a tax levying Act; and
  - (ii) authorised in the discretion of the customs authority;<sup>19</sup>

“**person**” means a natural person or a juristic entity, and includes an organ of state or an official of an organ of state;

“**place of entry**” means a place designated in terms of section **31** or **34** as a place of entry for the control of vessels, aircraft, trains, vehicles, goods and persons entering the Republic;

“**place of exit**” means a place designated in terms of section **31** or **34** as a place of exit for the control of vessels, aircraft, trains, vehicles, goods and persons leaving the Republic;

“**police officer**” means a member of the South African Police Service established in terms of the South African Police Service Act, 1995 (Act No. 86 of 1995);

“**port authority**” has the same meaning as in the Ports Act, 2005 (Act No.12 of 2005);

“**postal article**” means any letter, postcard, letter card, envelope, book, packet, pattern or sample packet or any parcel or other article when conveyed by post, and includes a telegram when conveyed by post;

<sup>19</sup> See for instance sections **114** and **115** stating the circumstances in which the release of goods for home use or a customs procedure must or may be refused.

**“posted”** means posted at a post office operated by the South African Post Office;

**“post office”** includes any house, building, room, vehicle, place or structure where the South African Post Office –

- (a) receives, sorts, delivers, make up or dispatch postal articles; or
- (b) renders any postal, savings, money transfer or other service,

and includes any pillar box or other receptacle provided by or with the approval of the South African Post Office for the reception of postal articles;

**“premises”** means any site, property, building, structure or any part of a site, property, building or structure;

**“private warehouse”** means licensed premises used exclusively by the licensee of the premises for the storage of goods owned by the licensee or in which the licensee has a material interest;

**“processing”**, in relation to –

- (a) goods under the inward processing procedure, means to the extent indicated in the Customs Tariff –
  - (i) to repair, clean, recondition, alter, adapt, pack or re-pack imported goods in the Republic;
  - (ii) to subject imported goods to an industrial process in the Republic; or
  - (iii) to use imported goods in a manufacturing process in the Republic;
- (b) goods under the home use processing procedure, means to the extent indicated in the Customs Tariff –
  - (i) to repack imported goods in retail quantities in the Republic;
  - (ii) to repair, alter, adapt or recondition imported goods;
  - (iii) to subject imported goods to an industrial process in the Republic; or
  - (iv) to use imported goods in a manufacturing process in the Republic; or
- (c) goods under the outward processing procedure, means to the extent indicated in the Customs Tariff –
  - (i) to repair, alter, adapt or recondition goods exported from the Republic abroad;
  - (ii) to subject goods exported from the Republic to an industrial process abroad;  
or
  - (iii) to use goods exported from the Republic in a manufacturing process abroad;

**“produce”**, in relation to goods, includes to plant, grow, harvest, manufacture, make, assemble, mine, extract or process goods or in any other way create or bringing forth goods;

“**producer**”, in relation to goods, means a person who produces goods;

“**prohibited goods**” means goods described in section **755**,<sup>20</sup>

“**prosecutable breach**”, in relation to this Act, means a breach of this Act which is an offence in terms of this Act;

“**prosecution avoidance penalty**” means an administrative penalty of a type referred to in section **846**;

“**provisional clearance declaration**” means a clearance declaration that may be used to clear goods for home use or a customs procedure in the circumstances set out in Part **1** of Chapter **23** and that contains information provisionally included in the declaration pending subsequent confirmation or correction;

“**public warehouse**” means licensed premises made available by the licensee of the premises to clients generally for the storage of their goods that are not in free circulation, but excludes –

- (a) a terminal or depot where goods are temporarily stored; or
- (b) a state warehouse or premises regarded to be a state warehouse in terms of section **569**;

“**rail cargo terminal**” means premises on a railway station where cargo is –

- (a) off-loaded from, or loaded on board, cross-border railway carriages; and
- (b) temporarily stored after being off-loaded or before being loaded;

“**rail consignment note**” means a document issued by a rail carrier for the transportation of goods to a specific destination on board a railway carriage, and which serves as proof that the carrier –

- (a) has received the goods; and
- (b) has undertaken to transport the goods on the terms and conditions stated in the document;

“**rail travellers terminal**” means premises on a railway station where travellers –

- (a) board, or disembark from, cross-border railway carriages; and

<sup>20</sup> “Prohibited goods” excludes counterfeit goods which are dealt with separately in Chapter **35**.



(b) are processed before boarding, or after disembarking from, cross-border railway carriages,

and includes –

- (i) all transit areas through which travellers must proceed to or from cross-border railway carriages; and
- (ii) all facilities used for or in connection with the operation of the terminal;

**“railway station”** includes a railway siding serving a specific agricultural, mining, industrial or commercial enterprise, complex or area;

**“railway terminal”** means –

- (a) a rail cargo terminal; or
- (b) a rail travellers terminal;

**“registered”** means registered in terms of Chapter 27;

**“regular clearance declaration”** means a clearance declaration that must be used for the clearance of goods for home use or a customs procedure in circumstances where a clearance declaration referred to in section 164(1)(b), (c), (d), (e) or (f) is not allowed;

**“regulation”** means a regulation made by the Minister in terms of section 869;

**“re-imported unaltered goods”** means goods imported into the Republic that –

- (a) were previously exported from the Republic, whether temporarily or outright; and
- (b) whilst abroad, have not undergone any manufacturing, processing or repairs except maintenance in connection with their use abroad;

**“release”**, in relation to goods, means a decision by the customs authority to allow the goods –

- (a) into free circulation, in the case of imported goods that are cleared for home use; or
- (b) to be dealt with in accordance with a specific customs procedure, in the case of goods that are cleared for that customs procedure;

**“release agent”**, in relation to goods, means the licensee of the customs controlled area where the goods are located immediately before their release for home use or a customs procedure;

**“release notification”** means –

- (a) an electronic message referred to in section **180(1)(a)** stating that goods have been released for home use or a customs procedure;
- (b) a computer printout referred to in section **180(1)(b)** stating that goods have been released for home use or a customs procedure; or
- (c) notification that goods have been released for home use or a customs procedure by any other method referred to in section **180(1)(c)**;

**“restricted goods”** means goods described in section **764**;

**“reusable transport equipment”** means containers, pallets, packing material or other transport equipment designed for continuous reuse in the transport of goods in the ordinary course of trade;

**“reward”**, in relation to the transport of goods or travellers, includes any form of consideration received or to be received wholly or partly in connection with the transport of the goods or travellers, irrespective of the person by whom or to whom the consideration has been or is to be paid or given;

**“road waybill”** means a document issued by a road carrier for the transportation of goods to a particular destination on board a vehicle, and which serves as proof that the carrier –

- (a) has received the goods; and
- (b) has undertaken to transport the goods on the terms and conditions stated in the document;

**“rule”** means a rule made by the Commissioner in terms of section **870**;

**“SACU”** means the Southern African Customs Union;

**“SACU Agreement”** means the Southern African Customs Union Agreement;

**“SACU member state”** means a state which is a member of SACU;

**“SADC”** means the Southern African Development Community;

**“SARS”** means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

**“sea cargo terminal”** means –

- (a) a general sea cargo terminal;
- (b) a special sea cargo terminal;
- (c) a bulk sea cargo terminal;
- (d) a container terminal;
- (e) a combination sea cargo terminal; or
- (f) a multi-purpose sea cargo terminal;

**“sea travellers terminal”** means premises within a customs seaport where travellers and crew –

- (a) board, or disembark from, foreign-going vessels; and
- (b) are processed before boarding, or after disembarking from, foreign-going vessels,

and includes –

- (i) all transit areas through which travellers and crew must proceed to or from foreign-going vessels; and
- (ii) all facilities used for or in connection with the operation of the terminal;

**“sectorally controlled goods”** means goods described in section 773;

**“security”** means security provided in terms of Chapter 30;

**“seize”**, in relation to goods, means to take physical possession of the goods without divesting a person of ownership of the goods;

**“self-assessment”**, in relation to taxable goods, means a calculation in terms of a tax levying Act by a person submitting a clearance declaration in respect of those goods of the amount of import or export tax payable on the goods in terms of that Act;

**“simplified clearance declaration”** means a clearance declaration that may be used to clear goods for home use or a customs procedure in accordance with simplified clearance requirements –

- (a) referred to in Part 3 of Chapter 23; or
- (b) that may be prescribed by rule for accredited persons in terms of Chapter 29;

**“South African Post Office”** means the South African Post Office Limited established in terms of section 3 of the Post Office Act, 1958 (Act No.44 of 1958);

**“special sea cargo terminal”** means premises within a customs seaport where cargo of a specific type, whether bulk or break bulk cargo, but other than cargo in containers is –

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
- (b) temporarily stored after being off-loaded or before being loaded;

**“state warehouse”** means a facility referred to in section 558(a) or (b) to which goods must be removed when required in terms of this Act, a tax levying Act or other legislation;

**“stores”** means goods taken on board a foreign-going vessel, foreign-going aircraft or cross-border train, whether in the Republic or elsewhere, exclusively for the purpose of meeting the reasonable needs of the next voyage of the vessel, aircraft or train, including stopovers, and includes goods intended to be used –

- (a) by travellers and crew on board the vessel, aircraft or train during that voyage;
- (b) for the operation of the vessel, aircraft or train on that voyage;
- (c) for the maintenance of the vessel, aircraft or train during that voyage; or
- (d) as tax free items for sale on board the vessel, aircraft or train to travellers and crew, in the case of a vessel, aircraft or train entitled in terms of section 334 to sell tax free items to travellers and crew;

**“stores procedure”** means the customs procedure described in section 320;

**“stores supplier”** means a person conducting business by supplying stores to foreign-going vessels, foreign-going aircraft or cross-border trains;

**“supplementary clearance declaration”** means a clearance declaration that supplements –

- (a) a provisional clearance declaration by confirming or correcting clearance information provided provisionally; or
- (b) an incomplete clearance declaration by providing all outstanding clearance information required for a regular clearance.

**“supporting document”** includes a document referred to in section 176;

**“tariff classification”** or **“classification”**, in relation to goods that are cleared for home use or a customs procedure, means the classification of the goods in terms of Chapter 6 of the Customs Duty Act under a heading, subheading, tariff item or other item specified in the Customs Tariff;

**“tax”**, in relation to goods, means an import tax, export tax or domestic tax on goods;

“**taxable**”, in relation to goods, indicates that an import or export tax has been imposed on the goods in terms of a tax levying Act;

“**tax refundable status**” means a tax status described in section **136(3)**;

“**tax due status**” means a tax status described in section **136(1)**;

“**tax free status**” means a tax status described in section **136(2)**;

“**tax levying Act**” means any legislation, other than this Act, imposing or imposing and regulating the administration of a specific tax on goods, and includes any of the following Acts together with any rules, regulations or other subordinate legislation issued in terms of any such Acts:

- (a) the Customs Duty Act;
- (b) the Value-added Tax Act;
- (c) the Excise Duty Act;<sup>21</sup>
- (d) the Diamond Export Levy Act, 2007 (Act No. 15 of 2007); and
- (e) the Diamond Export Levy Administration Act, 2007 (Act No. 14 of 2007);

“**tax free shop**” means premises from where goods are sold in accordance with the tax free shop procedure, and includes any storage facilities on the premises;<sup>22</sup>

“**tax free shop procedure**” means the customs procedure described in section **301**;

“**temporary admission**” or “**temporary admission procedure**” means the customs procedure described in section **247**;

“**temporary export**”, in relation to goods, means the export of goods under the temporary export procedure;

“**temporary export procedure**” means the customs procedure described in section **362**;

“**temporary storage**”, in relation to goods, means the storage of goods at –

- (a) a terminal until the goods are –

<sup>21</sup> Until the new Excise Duty Act is passed, the Customs and Excise Act, 1964, must in relation to excise duties, air travelers tax and environmental duties be regarded to be a tax levying Act. See section **891**.

<sup>22</sup> These facilities are not a private warehouse, but part of the tax free shop.

- (i) loaded on board a vessel, aircraft, railway carriage or vehicle at the terminal;  
or
  - (iii) removed from the terminal; or
- (b) a depot until the goods are removed from the depot,  
but excludes the storage of goods when the goods are retained at the terminal or depot  
under a direction in terms of section **569**(1);

**“terminal”** means –

- (a) a sea cargo terminal;
- (b) an air cargo terminal;
- (c) a sea travellers terminal;
- (d) an air travellers terminal; or
- (e) a railway terminal;

**“the Republic”** means the territory of the Republic of South Africa, including its internal and territorial waters referred to in sections 3 and 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), and the airspace above its territory and internal and territorial waters;

**“this Act”** includes –

- (a) the regulations and the rules; and
- (b) any notices of general application published by the Minister in terms of a provision of this Act in the *Gazette*;

**“train”** means a locomotive with or without any passenger, goods or other railway carriages attached to it, including the fittings and furnishings of such locomotive or railway carriage and any apparatus or equipment fitted on or to such locomotive or railway carriage;

**“transhipment”** or **“transhipment procedure”** means the customs procedure described in section **225**;

**“transit”**, in relation to goods, means national or international transit of goods;

**“transit operation”**, in relation to goods under the national or international transit procedure, includes –

- (a) the receipt of goods for carrying out that procedure;
- (b) the transport of those goods under that procedure; and
- (c) the delivery of those goods under that procedure at the destined customs controlled area;

**“transport document”**, in relation to cargo transported on board –

- (a) a vessel, means a bill of lading or other similar document issued in respect of the transport of that cargo;
- (b) an aircraft, means an air waybill or other similar document issued in respect of the transport of that cargo;
- (c) a railway carriage, means a rail consignment note or other similar document issued in respect of the transport of that cargo; or
- (d) a vehicle, means a road waybill, road manifest or other similar document issued in respect of the transport of that cargo;

**“traveller”** means a person travelling on board a vessel, aircraft, train or vehicle or on foot, but excludes a crew member of the vessel, aircraft, train or vehicle;

**“truck”** means a vehicle –

- (a) with a gross vehicle mass exceeding 3500 kilograms;<sup>23</sup> and
- (b) that is designed or adapted for the transport of goods;

**“UCR number”**, in relation to a consignment of goods –

- (a) imported into the Republic, means the unique consignment reference number allocated to the consignment by the person who exported the goods to the Republic; or
- (b) to be exported from the Republic, means the unique consignment reference number allocated to the consignment by the exporter of the goods;

**“unaccompanied baggage”**, in relation to a person entering or leaving the Republic, means any items in the baggage of a person entering or leaving the Republic that because of a delay in the travelling process, separate travelling arrangements or for any other reason were not or could not physically be with that person when that person is processed through customs at the place of entry through which that person enters or at the place of exit through which that person leaves the Republic;

**“unaccounted”**, in relation to goods, means a shortfall in goods according to any documents or records relating to the goods, where the reason for the shortfall cannot be ascribed to the destruction, damage or loss of the goods;

**“vehicle”** means –

<sup>23</sup> See National Road Traffic Act, 1996 (Act No. 93 of 1996).

- (a) a motor car, bus, mini-bus, van, truck, trailer, semi-trailer, motor cycle, wagon, cart, cycle, wheelbarrow or other means of conveyance of any kind whatsoever capable of moving on land, whether self-propelled or not, and including its fittings and furnishings and any apparatus or equipment fitted on or to it;
- (b) any combination of coupled vehicles referred to in paragraph (a) travelling or capable of travelling as a unit; or
- (c) any pack animal when used as a means of conveyance, including its harness and tackle and any cart, apparatus or article pulled by the animal, but excludes an aircraft, vessel, train, locomotive or railway carriage;

**“vessel”** means –

- (a) a craft of any kind whatsoever capable of moving in, on or under water, whether self-propelled or not;
- (b) a hovercraft; or
- (c) any floating structure, whether moored or not, including the fittings and furnishings of such craft or floating structure and any apparatus or equipment fitted on or to such craft or floating structure;

**“warehousing”** or **“warehousing procedure”** means the customs procedure described in section 281;

**“working day”** means any day other than a Saturday, Sunday or public holiday;

**“wreck”** includes –

- (a) any flotsam, jetsam, lagan or derelict;
- (b) any portion of a vessel or aircraft lost, abandoned or stranded;
- (c) any of the cargo, stores, apparatus or equipment of any such vessel or aircraft; and
- (d) any of the personal property on board such vessel or aircraft when it was lost or abandoned or when it stranded.

(2) In this Act, a word or expression which is a derivative or other grammatical form of a word or expression defined in this Act, has a corresponding meaning unless the context indicates that another meaning is intended.

(3) Unless inconsistent with the context, any reference in this Act or a tax levying Act to –

- (a) a person located in the Republic must be read –



- (i) in the case of a natural person, as a reference to a natural person ordinarily resident in the Republic at a fixed physical address in the Republic; or
- (ii) in the case of a person which is a juristic entity, as a reference to a juristic entity –
  - (aa) which is incorporated, registered or recognised in terms of the laws of the Republic or of another country; and
  - (bb) which has a place of business at a specific physical address in the Republic;
- (b) a specific Chapter of this Act must be read as including any regulation or rule made for the purpose, or to facilitate the implementation, of that Chapter;
- (c) a specific Part of a Chapter of this Act must be read as including any regulation or rule made for the purpose, or to facilitate the implementation, of that Part; and
- (d) a specific section of this Act must be read as including any regulation or rule made for the purpose, or to facilitate the implementation, of that section.

### **Time when goods are imported into or exported from Republic**

2. Unless inconsistent with the context, goods must for the purpose of this Act and a tax levying Act be regarded to be –
- (a) imported into the Republic when the goods enter the Republic;<sup>24</sup> and
  - (b) exported from the Republic when the goods leave the Republic.<sup>25</sup>

## ***Part 2: Purpose and application of this Act***

### **Purpose of this Act**

3. The purpose of this Act is –
- (a) to provide systems and procedures for customs control of all goods and persons entering or leaving the Republic;
  - (b) to enable the effective collection of import and export tax on such goods; and
  - (c) to facilitate the implementation of other legislation applicable to such goods and persons.

### **Goods and persons to which this Act applies**

4. This Act applies to all goods and persons that are subject to customs control in terms of Chapter 2.

### **Territorial application of this Act**

5. (1) This Act applies in the whole of the Republic.<sup>26</sup>

<sup>24</sup> See definition of “enter” in section 1.

<sup>25</sup> See definition of “leave” in section 1.

<sup>26</sup> Although the Prince Edward Islands form part of the Republic, this Act does not apply to those

- (2) For the purpose of subsection (1) —
- (a) the continental shelf referred to in section 8 of the Maritime Zones Act, 1994, must be regarded as being part of the Republic;
  - (b) any installation or device of any kind whatsoever, including any floating or submersible drilling or production platform, constructed or being operated upon, beneath or above the continental shelf for the purpose of exploring it or exploiting its natural resources, must be regarded as having been constructed or as being operated within the Republic; and
  - (c) any goods mined or produced in the operation of such installation or device and transported to the shore, whether by vessel, pipeline or otherwise, and any person or any other goods being transported by any means to and from such installation or device must be regarded as being transported within the Republic.

(3) Customs officers may perform their enforcement functions in terms of this Act in the contiguous and exclusive economic zones of the Republic referred to in sections 5 and 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), to the extent necessary to enforce, or to prevent a breach of this Act, a tax levying Act or any legislation referred to in Chapter 34 or 35.

#### **Application of this Act in relation to SACU member states**

6. (1) This Act applies to all goods imported into the Republic from a SACU member state and to all goods in the process of being exported from the Republic to a SACU member state, subject to any rules as must be prescribed in terms of subsection (2).

(2) The Commissioner must make rules to give effect to the SACU Agreement in the Republic.

#### **Application of this Act in relation to SADC member states**

7. (1) This Act applies to all goods imported into the Republic from a SADC member state and to all goods in the process of being exported from the Republic to a SADC member state, state, and must be applied subject to any rules as must be prescribed in terms of subsection (2).

(2) The Commissioner may make rules to give effect to the SADC Agreement in the Republic.

### **Application of this Act in relation to other legislation regulating goods and persons entering or leaving Republic**

8. This Act must be interpreted as facilitating the implementation of other legislation<sup>27</sup> to the extent that such legislation applies –

- (a) to goods or persons entering or leaving the Republic or to any matter relating to such goods or persons; or
- (b) in any areas which are customs controlled areas for purposes of this Act or to any matter relating to such areas.

### ***Part 3: Administration of this Act***

#### **Commissioner to administer this Act**

9. The Commissioner must –

- (a) administer this Act subject to the control and directions of the Minister; and
- (b) develop and maintain administrative, financial, technological, communicative and other systems and procedures necessary for the implementation and enforcement of this Act.

#### **Designation of customs officers**

10. (1) The Commissioner –

- (a) must designate any number of SARS officials as customs officers necessary for the proper implementation and enforcement of this Act and the tax levying Acts to the extent that those Acts apply to goods imported into, or exported from, the Republic;
- (b) may with the concurrence of an organ of state or other institution with whom the Commissioner has concluded an agreement in terms of section 15 designate persons in the service of that organ of state or institution as customs officers; and
- (c) may in a special case designate any competent person to act as a customs officer for a specific purpose during a specific period.

(2) No person may be designated in terms of subsection (1) as a customs officer –

- (a) unless that person –
  - (i) has filed with the Commissioner a declaration of interest determined by the Commissioner; and
  - (ii) complies with other requirements as may be prescribed by rule; or

<sup>27</sup> The Customs Control Act provides a “platform” for the implementation of other legislation applicable to goods and persons entering or leaving the Republic, especially the tax levying Acts and legislation prohibiting, restricting or regulating the import or export of goods.

- (b) if that person has a direct material financial interest in, or stands to benefit materially from, any business activity consisting of or relating to –
  - (i) the clearance of goods for home use or a customs procedure;
  - (ii) the import into or export from the Republic of goods; or
  - (iii) the production, processing, sale, handling or transport of, or the trade in, goods to which this Act applies.

(3) A customs officer must inform the Commissioner immediately if that officer acquires any interest referred to in subsection (2)(b).

(4) The Commissioner may at any time withdraw or suspend the designation of a person as a customs officer.

### **Powers and duties of customs officers**

- 11.** (1) A customs officer –
- (a) may exercise the powers and must perform the duties –
    - (i) assigned to customs officers generally by this Act,<sup>28</sup> subject to subsections (2) and (3); or
    - (ii) delegated or sub-delegated in terms of section **19** to customs officers generally or to that customs officer specifically; and
  - (b) must assist the Commissioner, as the Commissioner may require, in the implementation and enforcement of –
    - (i) this Act; and
    - (ii) the tax levying Acts to the extent that those Acts apply to goods imported into, or exported from, the Republic.

(2) Customs officers must perform their functions in accordance with an appropriate hierarchical system of customs management as may be determined by the Commissioner and whereby customs officers –

- (a) are entrusted with managerial, supervisory, operational or other responsibilities according to rank or on any other selective basis; and
- (b) perform those functions in a manner commensurate with their respective responsibilities.

<sup>28</sup> These are powers and duties conferred on customs officers directly by the Act or the rules otherwise than through delegation by the Commissioner.

(3) The Commissioner may, for the purpose of subsection (2), determine that a power or duty assigned generally to customs officers by this Act, may be exercised only by customs officers –

- (a) of at least a specific rank; or
- (b) selected in any other way.

### **General requirements for performing enforcement functions<sup>29</sup>**

**12.** (1) Customs officers must perform their enforcement functions –

- (a) in accordance with any instructions issued by the Commissioner; and
- (b) subject to any limitations and in accordance with any procedures as may be prescribed by rule or determined by the Commissioner.

(2) A customs officer may, subject to subsection (1) and sections **695** and **719**, perform an enforcement function at any time and without a warrant or previous notice.

(3) When performing an enforcement function, a customs officer may –

- (a) be accompanied and assisted by any interpreters, technicians, workers, police officers or any other persons whose assistance may reasonably be required for the performance of that function; or
- (b) use any aids such as a dog, or chemical substances, or imaging equipment, or any other mechanical, electrical or electronic devices, subject to compliance with any legislation applicable to the use of such aids.

(4) A person assisting a customs officer in terms of subsection (3)(a) must, whilst and for the purpose of assisting, be regarded to be a customs officer under the supervision of the customs officer that person is assisting.

### **Identification of customs officers and equipment**

**13.** (1) The Commissioner must issue an identity card to each person designated as a customs officer.

(2) When performing an enforcement function a customs officer must, on demand by a member of the public affected by the performance of the function, produce the identity card issued to that officer in terms of subsection (1).

(3) The Commissioner must design a distinctive customs flag and ensign for display on customs vehicles, aircraft, boats and other equipment which require public

<sup>29</sup> See definition of “enforcement function” in section 1.

identification.

### **Customs offices**

**14.** The Commissioner must by rule –

- (a) establish in the Republic or, if necessary, outside the Republic, any number of SARS offices for the purpose of this Act and designate any such office as a Customs Office, or designate any existing SARS office as a Customs Office;
- (b) determine the purpose and functions of each Customs Office; and
- (c) determine –
  - (i) the office hours of each Customs Office; and
  - (ii) the outside hours of attendance by customs officers.

### **Agreements for assistance in administration of this Act and tax levying Acts**

**15.** The Commissioner may by agreement with another organ of state or other institution inside or outside the Republic, including a railway, seaport, airport or postal authority, obtain the assistance of that organ of state or institution to perform such support services in the implementation or enforcement of this Act, or of any tax levying Act to the extent that such tax levying Act applies to goods imported into or exported from the Republic, as may be agreed between the Commissioner and that organ of state or institution.

### **Customs co-operation with other countries**

**16.** (1) The Commissioner may, if authorised by the national executive, enter into an agreement with the customs administration of another country –

- (a) to provide for customs co-operation, including the exchange of customs information between the Commissioner and that customs administration;
- (b) to facilitate the customs processing of goods –
  - (i) exported to the Republic from that country; and
  - (ii) exported from the Republic to that country; and
- (c) to allow –
  - (i) customs personnel of that customs administration to perform functions in the Republic necessary for the enforcement of the customs legislation of that country in respect of goods to be exported from the Republic to that country; and
  - (ii) customs officers of the Republic to perform functions in that country necessary for the enforcement of this Act, a tax levying Act or any legislation referred to in Chapter **34** and **35** in respect of goods to be exported to the Republic from that country.

(2) The Commissioner may make rules to give effect to any agreement in terms of subsection (1), including rules providing for customs officials of that country to perform the functions referred to in subsection (1)(c)(i) in the Republic.

#### **Provision of special customs services**

- 17.** (1) The Commissioner may by rule –
- (a) provide for the provision of special services to persons to assist them in complying with –
    - (i) this Act; or
    - (ii) a tax levying Act to the extent that such tax levying Act applies to goods imported into or exported from the Republic; and
  - (b) determine the fees payable for such services.

(2) Section 12(3) and (4) applies when customs officers perform services referred to in subsection (1).

### ***Part 4: Delegations***

#### **Delegations by Minister**

**18.** (1) The Minister may delegate to a Deputy Minister appointed to assist the Minister any of the powers or duties assigned to the Minister in terms of this Act.

- (2) A delegation in terms of subsection (1) —
- (a) must be in writing;
  - (b) is subject to such limitations and conditions as the Minister may determine;
  - (c) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
  - (d) may at any time be amended or repealed by the Minister.

(3) The Minister may at any time confirm, alter or repeal any decision taken in consequence of a delegation in terms of this section, but no such alteration or repeal may detract from any rights that have accrued as a result of the decision.

#### **Delegations by Commissioner**

- 19.** (1) The Commissioner –
- (a) must for the proper implementation of this Act develop an appropriate system of delegation to maximise managerial, administrative and operational efficiency; and
  - (b) may, in accordance with that system, delegate to a customs officer, including any SARS official who is not a customs officer –

- (i) any power or duty assigned by this Act to the Commissioner or the customs authority, excluding the power to make or amend rules; or
  - (ii) any part or aspect of any such power or duty.
- (2) A delegation in terms of subsection (1) —
- (a) must be in writing;
  - (b) is subject to such limitations and conditions as the Commissioner may determine generally or in a specific case;
  - (c) may either be to —
    - (i) a specific individual; or
    - (ii) the incumbent of a specific post;
  - (d) may, in the case of a delegation to a supervising customs officer, authorise the officer to sub-delegate the delegated power or duty, or part or aspect of such power or duty, in writing to —
    - (i) a customs officer under that supervising customs officer's control; or
    - (ii) the incumbent of a specific post under that supervising customs officer's control;
  - (e) does not divest the Commissioner of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
  - (f) may at any time be amended or repealed by the Commissioner.<sup>30</sup>
- (3) If a customs officer or SARS official takes a decision or any action that would have been valid had the power or duty authorising that decision or action been delegated to that person in terms of subsection (1)(b), that decision or action is valid despite the absence of such delegation if the decision or action —
- (a) was taken in the course of that person's ordinary duties;
  - (b) was necessary for the enforcement of this Act; and
  - (c) is ratified by the Commissioner.

### ***Part 5: Confidentiality***

#### **Definition**

**20.** In this Part —

**"authorised recipient"** means —

- (a) the Statistician-General contemplated in the Statistics Act, 1999 (Act No. 6 of 1999);
- (b) the Director-General of the National Treasury;

<sup>30</sup> See section 814 and other provisions of Chapter 36 for the reconsideration of decisions taken in terms of delegated powers.



- (c) the South African Police Service referred to in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (d) the National Director of Public Prosecutions referred to in section 5(2)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);
- (e) the Governor of the South African Reserve Bank;
- (f) the Director of the Financial Intelligence Centre;
- (g) the Auditor-General;
- (h) the Director-General of the Department of Trade and Industry;
- (i) the Chief Commissioner of the International Trade Administration Commission; or
- (j) any organ of state administering legislation applicable to the crossing of goods or persons into or out of the Republic.

### **Confidentiality**

**21.** No SARS official, customs officer or person referred to in section 12(3)(a), and no person who was such an official, officer or person, may disclose any information acquired by him or her in the exercise of powers or duties in terms of this Act or the Customs Duty Act concerning the private or confidential matters of any person,<sup>31</sup> except –

- (a) to the extent that such disclosure is made in the exercise of those powers or duties, including for the purpose of any proceedings referred to in Chapter 36;
- (b) if that official, officer or person is –
  - (i) summoned to give evidence as a witness before a court or tribunal and the Commissioner has authorised that official, officer or person to disclose the information; or
  - (ii) required to do so by a court;
- (c) if the person that will be affected by the disclosure has consented to the disclosure;
- (d) if there is a serious and imminent risk to public health or safety or the environment and the public's interest in the disclosure outweighs the official, officer or person's duty of confidentiality;
- (e) to an authorised recipient, subject to section 22; or
- (f) in accordance with –
  - (i) an international agreement or convention in respect of customs cooperation to which the Republic is a party, subject to section 23(1); or
  - (ii) any other international agreement or convention to which the Republic is a party, subject to section 23(2).

### **Disclosures to authorised recipients**

<sup>31</sup> Such official, customs officer or person may be obliged to disclose such information in terms of other legislation e.g. the Financial Intelligence Centre Act, 2001.

- 22.** (1) Any disclosure in terms of section **21(e)** to –
- (a) the Chief of the Central Statistics Services, must be confined to information necessary for statistical purposes;
  - (b) the Director-General of the National Treasury, must be confined to information –
    - (i) relating to foreign transactions under the Exchange Control Regulations; or
    - (ii) necessary for the development of tax policy or the estimation of revenue;
  - (c) the South African Police Service or the National Director of Public Prosecutions, must be confined to information relating to the alleged commission of offences;
  - (d) the Governor of the South African Reserve Bank, must be confined to information required for the performance of the Governor's functions in terms of the South African Reserve Bank Act, 1994 (Act No. 29 of 1994);
  - (e) the Director of the Financial Intelligence Centre, must be confined to information required for the performance of the Centre's functions in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
  - (f) the Auditor-General, must be confined to information required for the performance of the Auditor-General's functions in terms of section 4 of the Public Audit Act, 2004 (Act No. 25 of 2004);
  - (g) the Director-General of the Department of Trade and Industry, must be confined to information necessary for enforcing the legislation administered by the Department of Trade and Industry regulating the movement of goods or persons into or out of the Republic;
  - (h) the Chief Commissioner of the International Trade Administration Commission, must be confined to information required for the performance of the Commission's functions in terms of the International Trade Administration Act, 2002 (Act No. 71 of 2002); or
  - (i) an organ of state referred to in section **20(j)** must be confined to information necessary for enforcing the legislation administered by that organ of state regulating the movement of goods or persons into or out of the Republic.

(2) An authorised recipient may use the information disclosed in terms of subsection (1) only for the purpose for which the information was disclosed.

- (3) Information disclosed in terms of subsection (1)(c) may be used only –
- (a) for the purpose of investigating the alleged commission of an offence; and
  - (b) as evidence in prosecuting a person for an offence.

### **Disclosures in terms of international agreements and conventions**

- 23.** (1) A disclosure in terms of section **21(f)(i)** may be made only –

- (a) if authorised by the Commissioner; and
- (b) for a purpose and on conditions as may be specified by the Commissioner.

(2) A disclosure in terms of section 21(f)(ii) may be made only –

- (a) in circumstances where the international, regional or national interest in disclosure outweighs any potential harm to the person affected by the disclosure; and
- (b) for a purpose and on conditions as may be specified by the Commissioner.

(3) A disclosure referred to in subsection (1) or (2) may be made only to a person authorised to act on behalf of –

- (a) a party to the relevant international agreement or convention; or
- (b) an international agency, institution or organisation established or recognised in terms of that agreement or convention.

### ***Part 6: Other matters***

#### **Requests for information**

**24.** The customs authority may by written notice request a person in possession of information required for the administration of this Act or a tax levying Act, or any other legislation in the administration of which the Commissioner assists other organs of state, and which is sufficiently identified in the notice, to submit that information to the customs authority within a reasonable period specified in the notice.

#### **Rules to facilitate implementation of this Chapter**

**25.** Rules made in terms of section 870 to facilitate the implementation of this Chapter may include rules prescribing –

- (a) matters relating to the manner, time and place of performing enforcement functions by customs officers;
- (b) limitations and conditions relating to the performance of enforcement functions by customs officers; and
- (c) standards of conduct for customs officers when performing their enforcement functions; and
- (d) measures to prevent abuse of power by customs officers, including criminal sanctions.

#### **Offences in terms of this Chapter**

**26.** (1) A candidate customs officer is guilty of an offence if that person files in terms of section **10(2)(a)** with the Commissioner a declaration of interest which contains false or misleading information or omits information with the intention to mislead.

(2) A customs officer is guilty of an offence if that officer –

- (a) fails to comply with section **10(3)**;
- (b) demands or receives, otherwise than from or through his or her employer, any reward for performing or not performing an enforcement function; or
- (c) wilfully does or permits or agrees to do or permit anything in breach of this Act or a tax levying Act.

(3) A SARS official, a customs officer who is not a SARS official or a person referred to in section **12(3)** or a person who was such an official, officer or person is guilty of an offence if that official or person contravenes section **21**.

(4) A person is guilty of an offence if that person fails to comply with a request issued in terms of section **24**.

(5) An offence referred to in subsection (1) or (2) is a Category 1 offence.

## **CHAPTER 2**

### **CUSTOMS CONTROL, PLACES OF ENTRY AND EXIT AND CUSTOMS CONTROLLED AREAS**

#### **Purpose of this Chapter**

**27.** The purpose of this Chapter is –

- (a) to determine the goods and persons that are subject to customs control;
- (b) to provide for the designation of places as places of entry and places of exit through which vessels, aircraft, trains, railway carriages, vehicles, goods and persons may enter or leave the Republic; and
- (c) to designate and to provide for the designation of places and facilities as customs controlled areas to ensure effective customs control of goods and persons referred to in paragraph (a).

#### ***Part 1: Customs control***

#### **Customs control of goods**

**28.** (1) The following goods are for purposes of this Act subject to customs control:

- (a) all goods imported, or suspected on reasonable grounds to have been imported, into the Republic;
- (b) all goods in the process of being exported or suspected on reasonable grounds to be in the process of being exported from the Republic;
- (c) all compensating products under a customs procedure or goods suspected on reasonable grounds to be compensating products under a customs procedure;
- (d) all foreign-going vessels and aircraft, and all vessels or aircraft suspected on reasonable grounds to be foreign-going vessels or aircraft;
- (e) all domestic vessels;
- (f) all cross-border trains and railway carriages, and all trains or railway carriages suspected on reasonable grounds to be cross-border trains or railway carriages;
- (g) all vehicles entering or in the process of leaving the Republic, or suspected on reasonable grounds of having entered or being in the process of leaving the Republic;
- (h) all goods on board any vessel, aircraft, train, railway carriage or vehicle referred to in paragraph (d), (e), (f) or (g);
- (i) all vessels, aircraft, trains, railway carriages and vehicles transporting, or suspected on reasonable grounds to be transporting, goods referred to in paragraph (a), (b) or (c);
- (j) all cross-border transmission lines, and electricity being transmitted through a cross-border transmission line;
- (k) all cross-border pipelines, cable-cars and conveyor belts, and all goods in the process of being conveyed by way of a cross-border pipeline, cable-car or conveyor belt;
- (l) all goods, including vessels, aircraft, trains, locomotives, railway carriages and vehicles within a customs controlled area;
- (m) all goods in the process of being conveyed by means of pipelines or conveyor belts used for loading goods onto or off from foreign-going vessels or aircraft or cross-border railway carriages;
- (n) all goods that persons who are subject to customs control in terms of section **29(1)** have with them, including all accompanied and unaccompanied baggage of persons referred to in section **29(1)(a)** or (b); and
- (o) any other goods not covered above but in relation to which the customs authority may exercise a power in terms of a provision of this Act.

(2) Imported goods remain subject to customs control contemplated in subsection (1) until this Act ceases to apply to the goods. The occurrences which cause this Act to cease to apply to imported goods include the following:

- (a) if goods cleared for home use are unconditionally released for home use or, in the case of a conditional release for home use, when the release becomes unconditional;
- (b) if the goods are in terms of a provision of this Act allowed into free circulation otherwise than in terms of a clearance and release of the goods for home use;<sup>32</sup>
- (c) if the goods are exported from the Republic;
- (d) if the goods are destroyed;
- (e) if the goods are disposed of by the Commissioner in terms of this Act or by another organ of state in terms of other applicable legislation; and
- (f) if compensating products obtained from the processing of goods under a customs procedure are allowed into free circulation or exported under that procedure.<sup>33</sup>

(3) Goods destined for export or exported from the Republic (other than imported goods destined for export or exported from the Republic) remain subject to customs control contemplated in subsection (1) until this Act ceases to apply to the goods. The occurrences which cause this Act to cease to apply to such goods include the following:

- (a) if the goods are cleared for outright export and exported from the Republic;
- (b) if the goods are exported under a customs procedure other than outright export and the goods or compensating products obtained from those goods are re-imported into the Republic and cleared and released for home use under that procedure;<sup>34</sup>
- (c) if the goods are in terms of a provision of this Act allowed to be exported otherwise than in terms of a clearance and release of the goods for export;<sup>35</sup>
- (d) if the goods revert to free circulation in terms of a provision of this Act;
- (e) if the goods are destroyed; or
- (f) if the goods are disposed of by the Commissioner in terms of this Act or by another organ of state in terms of other applicable legislation.

(4) Compensating products obtained from imported goods under a customs procedure remain subject to customs control contemplated in subsection (1) until the compensating products are allowed into free circulation or exported under that procedure.

(5) Subsections (2), (3) and (4) do not affect the implementation of a provision of this Act or a tax levying Act in respect of matters related to goods after those goods have ceased to be subject to customs control contemplated in subsection (1).<sup>36</sup>

<sup>32</sup> For instance certain categories of imported goods are exempted in terms of section **106** from clearance requirements.

<sup>33</sup> Home use processing and inward processing procedures.

<sup>34</sup> For instance goods cleared and released for temporary export or outward processing.

<sup>35</sup> For instance certain categories of goods in free circulation destined for export are exempted in terms of section **110** from export clearance requirements.

### **Customs control of persons**

- 29.** (1) The following persons are for purposes of this Act subject to customs control:
- (a) all persons who have entered or are suspected on reasonable grounds of having entered the Republic, whether on board a vessel, aircraft, train or vehicle or on foot;
  - (b) all persons in the process of leaving or suspected on reasonable grounds of leaving the Republic, whether on board a vessel, aircraft, train or vehicle or on foot;
  - (c) all persons on board any vessel, aircraft, train, railway carriage or vehicle referred to in section **28**(1);
  - (d) all persons within a customs controlled area;
  - (e) all persons in any capacity connected with goods that are subject to customs control in terms of section **28**(1); and
  - (f) any other persons not covered above but in relation to whom the customs authority may exercise a power in terms of a provision of this Act.

(2) Persons entering the Republic remain subject to customs control contemplated in subsection (1) until the person is customs processed at a place of entry and allowed to proceed into the Republic.

(3) Persons in the process of leaving the Republic remain subject to customs control contemplated in subsection (1) until the person leaves the Republic.

(4) Despite subsections (2) and (3) those subsections do not affect the implementation of a provision of this Act or a tax levying Act applicable to the relevant persons after they have ceased to be subject to customs control contemplated in subsection (1).

### **Foreign-going vessels and aircraft passing through Republic without calling or landing**

**30.** (1) Foreign-going vessels or aircraft that enter and pass through the territorial water or airspace of the Republic without calling or landing at a place in the Republic, including any goods and persons on board such vessels or aircraft, are subject to customs control until they leave the territorial water or airspace of the Republic.

(2) When leaving the territorial water or airspace of the Republic –

<sup>36</sup> Some provisions such as the assessment and collection of tax on goods may be implemented long after customs have relinquished their control of the goods.

- (a) vessels, aircraft and goods referred to in subsection (1) must for the purpose of this Act be regarded as not having been imported into or exported from the Republic; and
- (b) any persons on board those vessels and aircraft must for the purposes of this Act be regarded as not having entered or leaving the Republic.

(3) Subsection (2) does not apply to goods or persons that do not remain on board, or are taken on board, the vessel or aircraft during its voyage across the territorial water or airspace of the Republic.

### ***Part 2: Places of entry and exit***

#### **Designation of places of entry and exit**

**31.** (1) The Commissioner must for the proper exercise of customs control, and in accordance with any applicable Acts of Parliament and decisions of the national executive, by rule designate any number of –

- (a) seaports in the Republic as places where foreign-going vessels may call or from where such vessels may depart;
- (b) airports in the Republic as places where foreign-going aircraft may land or from where such aircraft may depart;
- (c) rail border crossings as places where cross-border trains may enter or leave the Republic;
- (d) road border crossings as places where vehicles may enter or leave the Republic; and
- (e) any road or other border crossings as places where persons may enter or leave the Republic on foot.

(2) Places designated in terms of subsection (1) are places of entry or exit for the Republic.

#### **Purposes for which places of entry or exit may be used**

**32.** (1) A seaport or airport designated as a place of entry or exit in terms of section 31(1)(a) or (b) may be used as a place where –

- (a) foreign-going vessels or foreign-going aircraft may respectively call or land;
- (b) goods –
  - (i) imported into the Republic may be off-loaded from foreign-going vessels or aircraft; or
  - (ii) may be loaded on board foreign-going vessels or aircraft for export from the Republic; and
- (c) persons –
  - (i) entering the Republic may disembark from foreign-going vessels or aircraft; or



(ii) leaving the Republic may board foreign-going vessels or aircraft.

(2) A rail border crossing designated as a place of entry or exit in terms of section 31(1)(c) may be used as a place where –

- (a) goods may be imported into or exported from the Republic on board cross-border trains; and
- (b) persons may enter or leave the Republic on board cross-border trains.

(3) A road border crossing designated as a place of entry or exit in terms of section 31(1)(d) may be used as a place where –

- (a) goods may be imported into or exported from the Republic on board vehicles; and
- (b) persons may enter or leave the Republic on board vehicles.

(4) A road or other border crossing designated as a place of entry or exit in terms of section 31(1)(e) may be used as a place where persons may enter or leave the Republic on foot together with any goods they may have with them.

### **Restrictions on use of places of entry or exit**

**33.** The Commissioner must, in accordance with any applicable Acts of Parliament and decisions of the national executive, by rule –

- (a) restrict the use of any specific place of entry or exit to a purpose determined by the Commissioner;
- (b) restrict the use of any specific customs seaport or airport to –
  - (i) the offloading of goods of a specific type or in a specific manner from vessels or aircraft in which the goods were imported into the Republic;
  - (ii) the loading of goods of a specific type or in a specific manner on board vessels or aircraft in which the goods are to be exported from the Republic; or
  - (iii) the taking in of fuel or other stores;
- (c) determine that only a specific customs seaport or airport may be used as a place where –
  - (i) imported goods of a specific type may be off-loaded from foreign-going vessels or aircraft;
  - (ii) goods of a specific type may be loaded on board foreign-going vessels in which the goods are to be exported from the Republic; or
  - (iii) goods, or goods of a specific type, may be off-loaded, loaded or handled for international transit or transshipment; or
- (d) impose conditions as to the use of any specific place as a place of entry or exit, including the days on which and the hours of the day during which it may be so used.

**Places of entry or exit in terms of international agreements with adjoining countries**

**34.** (1) The national executive of the Republic may enter into an agreement with the government of a SACU member state or other adjoining country to provide for –

- (a) joint, one-stop or side by side places of entry or exit for the Republic and that adjoining country;
- (b) a place of entry or exit for the Republic alone at a location in that country; or
- (c) a place of entry or exit for that country alone at a location in the Republic.

(2) The Commissioner must make rules to give effect to any agreement in terms of subsection (1)(a) or (b) where the agreed place of entry or exit is at a location in the other country, including rules –

- (a) designating that place as a place of entry or exit for the Republic in terms of section **31(1)(c), (d) or (e)**;
- (b) determining –
  - (i) the purposes for which that place may be used as a place of entry or exit for the Republic; and
  - (ii) the days on which and the hours of the day during which it may be so used; and
- (c) prescribing procedures and conditions to be complied with, and the documents to be used, or any other matter necessary or useful, for –
  - (i) the implementation of the agreement; or
  - (ii) the use of that place as a place of entry or exit for the Republic.

(3) The Commissioner must make rules to give effect to any agreement in terms of subsection (1)(a) or (c) where the agreed place of entry or exit is at a location in the Republic, including rules providing for –

- (a) that place to be used by the adjoining country as a place of entry or exit in accordance with the legislation of that country –
  - (i) through which trains or vehicles may pass from or to that country;
  - (ii) through which goods may pass from or to that country;
  - (iii) where goods may be declared and processed for that country's customs purposes; and
  - (iv) through which persons may pass from or to that country; and
- (b) customs officials of that country at that place –
  - (i) to process for customs purposes goods and persons in accordance with the legislation of that country; and

- (ii) to apply and enforce the legislation of that country.<sup>37</sup>

### **Information sharing agreements**

**35.** (1) When exercising section **15**, the Commissioner and the port authority or other organ of state operating at a place of entry or exit may enter into an information sharing agreement for the proper and effective administration of that place as a place of entry or exit.

(2) An information sharing agreement may provide for –

- (a) the sharing of non-confidential information between the parties relevant to the administration of that place of entry or exit;
- (b) the specific information that must or may be shared between the parties;
- (c) the manner in which and the time within which information must be passed to the other party;
- (d) the combination of reports, notifications, declarations, statements, returns or other documents that must be submitted by third persons respectively to the customs authority in terms of this Act and to the other party in terms of the legislation administered by the other party;
- (e) the exemption of third persons from the obligation to submit to each party separate overlapping reports, notifications, declarations, statements, returns or other documents containing substantially the same information; and
- (f) the submission by third persons of such reports, notifications, declarations, statements, returns or other documents to only one of the parties.

(3) The Commissioner may by rule –

- (a) give effect to an information sharing agreement in terms of subsection (1); or
- (b) exempt a person from a requirement in terms of this Act to submit a report, notification, declaration, statement, return or other document, provided that the exempted person submits substantially the same information that must be contained in that report, notification, declaration, statement, return or other document to the other party.

### **Places of entry for foreign-going vessels and aircraft**

**36.** (1) No foreign-going vessel –

- (a) after entering the Republic may call on any port or place along the coastline of the Republic other than a customs seaport; and

<sup>37</sup> In the case of section **34**(1)(b) where the place of entry or exit for the Republic is at a location in that country, the adjoining country must have provisions similar to section **34**(3) to allow SA Customs to operate in that country.

- (b) when leaving the Republic, may depart from a place other than a customs seaport.

(2) After departing from a customs seaport –

- (a) to another place within the Republic, no foreign-going vessel may call on any port or place along the coastline of the Republic other than a customs seaport; or
- (b) to a destination outside the Republic, no foreign-going vessel may call on any port or place along the coastline of the Republic.

(3) No foreign-going aircraft –

- (a) after entering the Republic, may land at any place other than a customs airport; or
- (b) when leaving the Republic, may depart from any place other than a customs airport.

(4) After departing from a customs airport –

- (a) to another place within the Republic, no foreign-going aircraft may land at any place in the Republic other than a customs airport; or
- (b) to a destination outside the Republic, no foreign-going aircraft may land at any place in the Republic.

(5) Subsections (1) to (4) do not apply to –<sup>38</sup>

- (a) naval ships and naval or military aircraft to the extent that they fall within the definition of “**foreign-going vessel**” or “**foreign-going aircraft**”; and
- (b) foreign-going aircraft of an unconventional nature, such as helicopters, aircraft landing on water, gliders or balloons.

(6) The Commissioner may, in accordance with any applicable Acts of Parliament and decisions of the national executive, by rule prescribe –

- (a) places at which or the conditions on which aircraft referred to in subsection (5)(b) may call or land in the Republic;
- (b) places from where or the conditions on which such aircraft may depart from the Republic;
- (c) reporting requirements for such aircraft; and
- (d) the granting of exemptions from rules prescribed in terms of paragraphs (a), (b) or (c).

### **Calls or landings resulting from forced circumstances<sup>39</sup>**

<sup>38</sup> Section 46 makes provision for additional exclusions and exemptions.

<sup>39</sup> See section 546 for wreck.

**37.** (1) Section **36**(1), (2), (3) or (4) does not apply if a foreign-going vessel or aircraft is forced by stress of weather, accident or other circumstances beyond the control of the on-board operator to call or land at a place which is not a customs seaport or airport.

(2) If a foreign-going vessel or aircraft makes a forced call or landing, the incident, and the circumstances of the incident, must promptly be reported –

- (a) by the on-board operator to the Customs Office –
  - (i) nearest to the place where the vessel called or the aircraft landed; or
  - (ii) at the first customs seaport or airport at which the vessel or aircraft next arrives; or
- (b) if the vessel or aircraft is operated by a carrier, by the carrier electronically in terms of section **879**.

(3) The on-board operator of a foreign-going vessel or aircraft which makes a forced call or landing, and if the vessel or aircraft is operated by a carrier, also the carrier, must at the place where the vessel calls or the aircraft lands take all precautions reasonable in the circumstances to prevent a breach of this Act or a tax levying Act in respect of any goods or persons –

- (a) on board the vessel or aircraft;
- (b) off-loaded or disembarking from the vessel or aircraft at that place; or
- (c) loaded on board or boarding the vessel or aircraft at that place.

(4) The Commissioner may prescribe by rule the procedures that must be complied with after a vessel or aircraft has made a forced call or landing.

### **Places of entry or exit for cross-border trains**

**38.** No cross-border train may enter or leave the Republic at a rail border crossing other than a rail border crossing designated in terms of section **31**(1)(c) as a place of entry or exit.

### **Places of entry or exit for vehicles**

**39.** (1) No vehicle may enter<sup>40</sup> or leave<sup>41</sup> the Republic at a place other than a land border-post for vehicles.

<sup>40</sup> When an inbound vehicle arrives at a land border-post the requirements of this Act relating to the vehicle, and goods and persons on board the vehicle, must be complied with. These requirements include declaring goods that must be declared in terms of section **465**, and clearing the vehicle and any goods on board the vehicle for home use or a customs procedure in terms of section **104** excluding goods exempted from clearance in terms of section **106**.

<sup>41</sup> When an outbound vehicle arrives at a land border-post the requirements of this Act relating to the vehicle and the goods and persons on board the vehicle must be complied with. These requirements include declaring goods that must be declared in terms of section **470** and clearing the vehicle and any goods

(2) Subsection (1) does not apply to vehicles imported into or exported from the Republic on board foreign-going vessels or aircraft or cross-border trains.<sup>42</sup>

#### **Places of entry or exit for persons**

**41.** (1) A person entering or leaving the Republic on board –

- (a) a foreign-going vessel may not disembark from or board that vessel at any place other than at a customs seaport; or
- (b) a foreign-going aircraft may not disembark from or board that aircraft at any place other than at a customs airport.

(2) Subsection (1)(a) or (b) does not apply if a vessel or aircraft is forced by stress of weather, accident or other circumstances beyond the control of the on-board operator to call or land at a place which is not a customs seaport or a customs airport.

(3) No person may enter or leave the Republic –

- (a) on board a cross-border train otherwise than at a rail border crossing designated as a place of entry or exit in terms of section **31**(1)(c);
- (b) on board a vehicle otherwise than at a land border-post for vehicles; or
- (c) on foot otherwise than at a land border-post for persons on foot.

#### **Places of entry or exit for goods**

**43.** (1) No goods imported into or destined for export from the Republic on board –

- (a) a foreign-going vessel may be off-loaded from or loaded on board the vessel other than at a customs seaport and, more specifically, at a place within the customs seaport licensed as a sea cargo terminal or sea travellers terminal;
- (b) a foreign-going aircraft may be off-loaded from or loaded on board the aircraft other than at a customs airport and, more specifically, at a place within a customs airport licensed as an air cargo terminal or air travellers terminal; or
- (c) a cross-border railway carriage may be off-loaded from or loaded on board the railway carriage other than at a place within a railway station licensed as a rail terminal.

on board the vehicle in terms of section **108** for export, excluding goods exempted from clearance in terms of section **110**.

<sup>42</sup> Section **46** makes provision for additional exclusions and exemptions.

(2) Goods off-loaded at a sea or air travellers terminal must be moved to a sea or air cargo terminal except in circumstances prescribed by rule or where the customs authority determines otherwise in a specific case.

- (3) No goods may be imported into or exported from the Republic –
- (a) on board a cross-border train otherwise than through a rail border crossing designated as a place of entry or exit in terms of section **31(1)(c)**;
  - (b) on board a vehicle otherwise than through a land border-post for vehicles;
  - (c) by persons on foot otherwise than through a land border-post for persons on foot;
  - (d) through a pipeline other than a licensed cross-border pipeline; or
  - (e) by way of a cable-car or conveyor belt other than a licensed cross-border cable-car or conveyor belt.

(4) No electricity may be imported into or exported from the Republic otherwise than through a licensed cross-border transmission line.

(5) Subsections (1) and (2) do not apply to accompanied or unaccompanied baggage.

#### **Consequences in event of contravention of entry or exit requirements**

**44.** (1) If section **36** is contravened in relation to any foreign-going vessel or aircraft, or if section **38** is contravened in relation to any cross-border train, or if section **39** is contravened in relation to any vehicle, or if section **43** is contravened in relation to any goods, the customs authority may –

- (a) apply subsection (2) or (3), as may be appropriate, with regard to –
  - (i) the vessel or aircraft, or any goods on board the vessel or aircraft when the offence was committed, in the case of a section **36** contravention;
  - (ii) the train or any railway carriage that was attached to the train when the offence was committed, in the case of a section **38** contravention;
  - (iii) the vehicle, in the case of a section **39** contravention; or
  - (iv) the goods, in the case of a section **43** contravention;

- (2) The customs authority may for tax purposes regard –
- (a) a vessel or aircraft, or any goods referred to in subsection (1)(a)(i), to be cleared for home use under Chapter **8**<sup>43</sup> if the contravention was committed when the vessel or aircraft was on an inbound voyage;

<sup>43</sup> For tax implications if goods are regarded to be cleared for home use, see section **151**.

- (b) a train, or any railway carriage referred to in subsection (1)(a)(ii), to be cleared for home use under Chapter 8 if the contravention was committed in relation to a train entering the Republic;
- (c) a vehicle to be cleared for home use under Chapter 8 if the contravention was committed in relation to a vehicle entering the Republic; or
- (d) goods imported into the Republic to be cleared for home use under Chapter 8 if the goods –
  - (i) in the case of goods referred to in section 43(1), were off-loaded from a vessel, aircraft or railway carriage in contravention of that section; or
  - (ii) in the case of goods referred to in section 43(3), were imported otherwise than through a place of entry in contravention of that section.

(3) The customs authority may for tax purposes regard –

- (a) a vessel or aircraft, or any goods referred to in subsection (1)(a)(i), that have not been cleared for outright export, to be cleared for outright export<sup>44</sup> if the contravention was committed when the vessel or aircraft was on an outbound voyage;
- (b) a train, or any railway carriage referred to in subsection (1)(a)(ii), to be cleared for outright export if the contravention was committed in relation to a train leaving the Republic;
- (c) a vehicle to be cleared for outright export if the contravention was committed in relation to a vehicle leaving the Republic; or
- (d) goods that are in the process of being exported or that have been exported from the Republic to be cleared for outright export if the goods –
  - (i) in the case of goods referred to in section 43(1), were loaded on board a vessel, aircraft or railway carriage in contravention of that section; or
  - (ii) in the case of goods referred to in section 43(3), are being or were exported from the Republic in contravention of that section.

(4) Subsection (1) applies apart from any criminal proceedings that may be instituted, administrative penalty that may be imposed or any other step that may be taken by the customs authority in terms of this Act for a breach of an entry or exit requirement, which may include, where not inconsistent with this Act or other applicable legislation or otherwise inappropriate –

- (a) applying section 559(2) to –
  - (i) the vessel, aircraft or any goods referred to in subsection (1)(a)(i);
  - (ii) the train or railway carriage referred to in subsection (1)(a)(ii);

<sup>44</sup> For tax implications if goods are regarded to be cleared for outright export, see section 156.



- (iii) the vehicle referred to in subsection (1)(a)(iii); or
- (iv) any goods referred to in subsection (1)(a)(iv);
- (b) seizing any such vessel, aircraft, train, railway carriage, vehicle or goods in terms of Chapter **33**;
- (c) allowing the carrier operating, or the owner or on-board operator of, such vessel, aircraft, train, railway carriage or vehicle, or the importer or exporter of any such goods, to abandon the vessel, aircraft, train, railway carriage, vehicle or goods to the Commissioner in accordance with Chapter **25**; or
- (d) allowing or directing the carrier operating, or the owner or on-board operator of, such vessel, aircraft, train, railway carriage or vehicle, or the importer or exporter of any such goods –
  - (i) to remove the vessel, aircraft, train, railway carriage or vehicle or goods from the Republic; or
  - (ii) to destroy the goods under supervision of the customs authority or an organ of state designated by the customs authority.

### ***Part 3: Customs controlled areas***

#### **List of customs controlled areas**

- 45.** (1) The following areas, premises or facilities are customs controlled areas for the purpose of this Act:
- (a) all licensed –
    - (i) general sea cargo terminals;
    - (ii) special sea cargo terminals;
    - (iii) bulk sea cargo terminals;
    - (iv) container terminals;
    - (v) combination sea cargo terminals;
    - (vi) multi-purpose sea cargo terminals;
    - (vii) sea travellers terminals;
    - (viii) air cargo terminals;
    - (ix) air travellers terminals;
    - (x) air cargo depots;
    - (xi) rail cargo terminals;
    - (xii) rail travellers terminals;
    - (xiii) container depots;
    - (xiv) international postal clearance depots;
    - (xv) customs warehouses;
    - (xvi) tax free shops;
    - (xvii) IDZ enterprises;

- (xviii) inward processing premises;
- (xix) home use processing premises;
- (xx) state warehouses contemplated in section **558(b)**;
- (xxi) cross border pipelines;
- (xxii) cross-border transmission lines;
- (xxiii) cross border cable-cars; or
- (xxiv) cross border conveyor belts;
- (b) state warehouses contemplated in section **558(a)**; and
- (c) any other premises referred to in section **615(f)**.

- (2) The Commissioner may by rule designate as a customs controlled area –
- (a) the whole area comprising a customs seaport or airport or other place of entry or exit;
  - (b) any part of an area comprising a customs seaport or airport or other place of entry or exit;
  - (c) an industrial development zone or any part of an industrial development zone; or
  - (d) any general or special entrance to or exit from –
    - (i) a customs seaport or airport or other place of entry or exit; or
    - (ii) an area designated as a customs controlled area in terms of paragraph (b) or (c).

(3) The licensee of a customs controlled area must free of charge provide facilities at the customs controlled area, as may be determined by rule, for customs officers to exercise their enforcement functions in relation to goods and persons at or in that customs controlled area.

#### ***Part 4: Other matters***

##### **Exclusions and exemptions**

**46.** The Commissioner may in accordance with any applicable decisions of the national executive –

- (a) by rule exclude from the application of any of or all the provisions of this Chapter –
  - (i) any category of vessels, aircraft, trains, railway carriages or vehicles;
  - (ii) any category of persons, travellers or crew; or
  - (iii) any category of goods;
- (b) by rule prescribe the conditions of any exclusion referred to in paragraph (a); or
- (c) in justifiable circumstances exempt<sup>45</sup> –
  - (i) a specific vessel, aircraft, train, railway carriage; vehicle or goods from the application of any of or all the provisions of this Chapter; or

<sup>45</sup> See section **883** for conditional exemptions.

- (ii) a specific person from complying with any of or all the provisions of this Chapter.

### **Rules to facilitate implementation of this Chapter**

**47.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) conditions and requirements to facilitate the use of areas, premises or facilities referred to in section **45** (1) or (2) as customs controlled areas;
- (b).....

### **Offences in terms of this Chapter**

**48.** (1) The on-board operator of a foreign-going vessel, and if the vessel is operated by a carrier, also the carrier, is guilty of an offence if –

- (a) section **36**(1) or (2) is contravened with regard to that vessel;
- (b) that on-board operator or carrier fails to comply with section **37**(2) or (3); or
- (c) section **43**(1)(a) is contravened with regard to goods off-loaded from or loaded on board that vessel.

(2) The on-board operator of a foreign-going aircraft, and if the aircraft is operated by a carrier, also the carrier, is guilty of an offence if –

- (a) section **36**(3) or (4) is contravened with regard to that aircraft;
- (b) that on-board operator or carrier fails to comply with section **37**(2) or (3); or
- (c) section **43**(1)(b) is contravened with regard to goods off-loaded from or loaded on board that aircraft.

(3) The carrier operating a cross-border train or railway carriage is guilty of an offence if –

- (a) section **38** is contravened with regard to that train;
- (b) section **43**(1)(c) is contravened with regard to goods off-loaded from or loaded on board that railway carriage; or
- (c) section **43**(3)(a) is contravened with regard to goods on board that train.

(4) The on-board operator of a vehicle, and if the vehicle is operated by a carrier, also the carrier, is guilty of an offence if section **39**(1) is contravened with regard to that vehicle.

(5) A person is guilty of an offence if that person contravenes or fails to comply with section **41** or **43**(3)(c), (d) or (e) or (4).

- (6) The following offences are Category 1 offences:
- (a) the offences referred to in subsections (1)(c), (2)(c) and (3)(b); and
  - (b) the offences referred to in subsection (4)(a) or (c) committed with regard to a vehicle, or goods on board a vehicle, operated by a carrier.

### **CHAPTER 3**

## **REPORTING REQUIREMENTS FOR INBOUND AND OUTBOUND VESSELS, AIRCRAFT, TRAINS, BUSES, TRUCKS, PERSONS AND CARGO<sup>46</sup>**

### **Purpose of this Chapter**

- 49.** The purpose of this Chapter is to establish reporting requirements for –
- (a) all vessels, aircraft, trains, buses, trucks or persons entering or leaving the Republic; and
  - (b) all cargo imported into or to be exported from the Republic.

### **Arrival and departure of foreign-going vessels and aircraft, and cross-border trains**

- 50.** For the purposes of this Act –
- (a) a foreign-going vessel or goods or persons on board a foreign-going vessel must be regarded as –
    - (i) arriving at a customs seaport when the vessel upon reaching the seaport docks for the first time at that seaport, whether inside the seaport or at a docking facility outside the seaport; or
    - (ii) departing from a customs seaport when the vessel undocks to move out of or away from the seaport;
  - (b) a foreign-going aircraft or goods or persons on board a foreign-going aircraft must be regarded as –
    - (i) arriving at a customs airport when the aircraft lands at the airport; or
    - (ii) departing from a customs airport when the aircraft takes off from the airport; or
  - (c) a cross-border train or a railway carriage attached to a cross-border train or goods or persons on board a cross-border train must be regarded as –
    - (i) arriving at a railway station when the train stops for the first time at a railway terminal at that railway station; or
    - (ii) departing from a railway station when the train starts to move out of the railway station.

<sup>46</sup> Non-compliance with the reporting and other requirements of this Chapter is not a criminal offence but may as non-prosecutable breaches of this Act attract fixed amount penalties in terms of Chapter 37.

***Part 1: Reporting requirements for arriving and departing foreign-going vessels<sup>47</sup>***

**Application of this Part**

**51.** This Part –

- (a) applies to all foreign-going vessels to the extent indicated in the provisions of this Part; and
- (b) does not apply to naval ships to the extent that they fall within the definition of “foreign-going vessel”.<sup>48</sup>

**Advance arrival notices**

**52.** (1) (a) The carrier operating a foreign-going vessel bound for the Republic must give advance notice to the customs authority –

- (i) of the scheduled arrival of the vessel in the Republic; and
- (ii) if the vessel is transporting travellers bound for the Republic, of the scheduled arrival of those travellers in the Republic.

(b) An advance vessel arrival notice referred to in paragraph (a)(i) and an advance sea travellers arrival notice referred to in paragraph (a)(ii) must be submitted –

- (i) within a timeframe as may be prescribed by rule; and
- (ii) either separately, simultaneously or as a combined notice, as may be prescribed by rule.

(2) (a) Each cargo reporter responsible for cargo on board a foreign-going vessel bound for the Republic that will be off loaded in the Republic must give advance notice to the customs authority of the scheduled arrival of that cargo in the Republic.

(b) An advance sea cargo arrival notice referred to in paragraph (a) must be submitted within a timeframe as may be prescribed by rule.

(3) This section applies only to foreign-going vessels operated by carriers.

**Arrival reports and cargo manifests**

**53.** (1) The arrival of a foreign-going vessel at a customs seaport must be reported to the customs authority –

- (a) by the port authority managing that seaport; and
- (b) if the vessel –

<sup>47</sup> Arrival and departure of domestic vessels at customs seaports dealt with in Chapter 4. Also note that the prescribed minimum periods for submission of advance arrival and departure notices may on good grounds shown be shortened in specific cases in terms of section 876 and that the timeframes for submission of arrival and departure reports and cargo manifests may be extended in terms of section 875.

<sup>48</sup> Section 89 makes provision for additional exclusions and exemptions.

- (i) is a vessel operated by a carrier, by the carrier unless the customs authority permits otherwise; or
- (ii) is not a vessel operated by a carrier, by the on-board operator of the vessel unless the customs authority permits otherwise.

(2) A vessel arrival report referred to in subsection (1) must be submitted –

- (a) within a timeframe as may be prescribed by rule after the arrival of the vessel at a customs seaport; and
- (b) whether or not the vessel has goods or travellers on board.

(3) (a) The carrier operating a foreign-going vessel arriving at a customs seaport must submit to the customs authority –

- (i) a report of any travellers and crew who entered the Republic on board the vessel and are disembarking from the vessel at that seaport; and
- (ii) a manifest of any imported cargo on board the vessel to be off loaded at that seaport.

(b) A sea travellers arrival report referred to in paragraph (a)(i) must be submitted either simultaneously with or as part of the vessel arrival report referred to in subsection (1), as may be prescribed by rule.

(c) A manifest referred to in paragraph (a)(ii) must be submitted within a timeframe as may be prescribed by rule after the arrival of the vessel at that seaport.

(4) Subsection (1) applies to all foreign-going vessels and subsection (3) applies only to foreign-going vessels operated by carriers.

### **Advance departure notices**

**54.** (1) (a) The carrier operating a foreign-going vessel must give advance notice to the customs authority –

- (i) of the scheduled departure of the vessel from a customs seaport; and
- (ii) if the vessel is to transport travellers to a destination outside the Republic, of all travellers bound for such destination who boarded or are scheduled to board the vessel at that seaport.

(b) An advance vessel departure notice referred to in paragraph (a)(i) and an advance sea travellers departure notice referred to in paragraph (a)(ii) must be submitted within a timeframe as may be prescribed by rule before the scheduled departure of the vessel from that customs seaport, whether to another customs seaport or to a destination outside the Republic.

(2) (a) Each cargo reporter responsible for cargo loaded or to be loaded on board a foreign-going vessel at a customs seaport for export from the Republic must give advance notice to the customs authority of that outgoing cargo.

(b) An advance sea cargo departure notice must be submitted within a timeframe as may be prescribed by rule before the scheduled departure of that vessel from that customs seaport, whether to another customs seaport or to a destination outside the Republic.

(c) Paragraphs (a) and (b) do not apply in respect of cargo that is to be transhipped in accordance with Chapter **10**. In such a case the transhipment clearance declaration or document regarded to be a transhipment clearance declaration in terms of section **235** must be regarded to be the advance sea cargo departure notice referred to in paragraph (a).

(3) This section applies only to foreign-going vessels operated by carriers.

### **Permissions to depart**

**55.** (1) No foreign-going vessel may depart from a customs seaport without a permission to depart issued by the customs authority.

(2) An application for a permission to depart must be submitted to the customs authority –

- (a) in the manner as may be prescribed by rule; and
- (b) be accompanied or supported by such documents as may be required by rule or in terms of a tax levying Act or other legislation applicable to the departure of vessels from a customs seaport.<sup>49</sup>

(3) No permission to depart may be issued –

- (a) unless section **54** has been complied with, in the case of a vessel operated by a carrier; or
- (b) if the vessel has been detained, seized or confiscated, or if the vessel has on board goods that have been detained, seized or confiscated, in terms of –
  - (i) this Act or a tax levying Act; or
  - (ii) other legislation or a court order and the customs authority has been informed of the detention, seizure or confiscation.

<sup>49</sup> These documents include safety certificates, departure clearances by the port authority, Home Affairs certificates, Post Office certificates, income tax forms, etc.

(4) If a vessel in respect of which a permission to depart has been issued in terms of subsection (1) does not depart within a timeframe as may be prescribed by rule after the permission was issued, the permission lapses and a new permission to depart must be obtained before the vessel may depart.

(5) This section applies to all foreign-going vessels.

### **Departure reports and cargo manifests**

**56.** (1) The departure of a foreign-going vessel from a customs seaport to another customs seaport or a destination outside the Republic must be reported to the customs authority –

(a) by the port authority managing that seaport; and

(b) if the vessel –

(i) is a vessel operated by a carrier, by the carrier unless the customs authority permits otherwise; or

(ii) is not a vessel operated by a carrier, by the on-board operator of the vessel unless the customs authority permits otherwise.

(2) A vessel departure report referred to in subsection (1) must be submitted –

(a) within a timeframe as may be prescribed by rule after the departure of the vessel from that seaport; and

(b) whether or not the vessel has goods or travellers on board.

(3) (a) The carrier operating a foreign-going vessel departing from a customs seaport to another customs seaport or a destination outside the Republic must submit to the customs authority –

(i) a report of all travellers and crew on board the vessel bound for a destination outside the Republic; and

(ii) a manifest of all cargo on board the vessel intended for export.

(b) A sea travellers departure report referred to in paragraph (a)(i) and a manifest referred to in paragraph (a)(ii) must be submitted within a timeframe as may be prescribed by rule after the departure of the vessel from that seaport.

(4) Subsection (1) applies to all foreign-going vessels and subsection (3) applies only to foreign-going vessels operated by carriers.



**Part 2: Reporting requirements for arriving and departing foreign-going aircraft<sup>50</sup>**

**Application of this Part**

**57.** This Part –

- (a) applies to all foreign-going aircraft to the extent indicated in the provisions of this Part; and
- (b) does not apply to naval or military aircraft to the extent that they fall within the definition of “foreign- going aircraft”.<sup>51</sup>

**Advance arrival notices**

**58.** (1) (a) The carrier operating a foreign-going aircraft bound for the Republic must give advance notice to the customs authority –

- (i) of the scheduled arrival of the aircraft in the Republic; and
- (ii) if the aircraft is transporting travellers bound for the Republic, of the scheduled arrival of those travellers in the Republic.

(b) An advance aircraft arrival notice referred to in paragraph (a)(i) and an advance air travellers arrival notice referred to in paragraph (a)(ii) must be submitted –

- (i) within a timeframe as may be prescribed by rule; and
- (ii) either separately, simultaneously or as a combined notice, as may be prescribed by rule.

(2) (a) Each cargo reporter responsible for cargo on board a foreign-going aircraft bound for the Republic that will be off loaded in the Republic must give advance notice to the customs authority of the scheduled arrival of that cargo in the Republic.

(b) An advance air cargo arrival notice referred to in paragraph (a) must be submitted within a timeframe as may be prescribed by rule.

(3) This section applies only to foreign-going aircraft operated by carriers.

**Arrival reports and cargo manifests**

**59.** (1) The arrival of a foreign-going aircraft at a customs airport must be reported to the customs authority –

- (a) by the port authority managing that airport; and
- (b) if the aircraft –

<sup>50</sup> Note that the prescribed minimum periods for submission of advance arrival and departure notices may on good grounds shown be shortened in specific cases in terms of section **876** and that the timeframes for submission of arrival and departure reports and cargo manifests may be extended in terms of section **875**.

<sup>51</sup> Section **89** makes provision for additional exclusions and exemptions.

- (i) is an aircraft operated by a carrier, by the carrier unless the customs authority permits otherwise; or
- (ii) is not an aircraft operated by a carrier, by the on-board operator of the aircraft unless the customs authority permits otherwise.

(2) An aircraft arrival report referred to in subsection (1) must be submitted –

- (a) within a timeframe as may be prescribed by rule after the arrival of the aircraft at a customs airport; and
- (b) whether or not the aircraft has goods or travellers on board.

(3) (a) The carrier operating a foreign-going aircraft arriving at a customs airport must submit to the customs authority –

- (i) a report of any travellers and crew who entered the Republic on board the aircraft and disembarking from the aircraft at that airport; and
- (ii) a manifest of imported cargo on board the aircraft to be off loaded at that airport.

(b) An air travellers arrival report referred to in paragraph (a)(i) must be submitted either simultaneously with or as part of the aircraft arrival report referred to in subsection (1), as may be prescribed by rule.

(c) A manifest referred to in paragraph (a)(ii) must be submitted within a timeframe as may be prescribed by rule after the arrival of the aircraft at that airport.

(4) Subsection (1) applies to all foreign-going aircraft and subsection (3) applies only to foreign-going aircraft operated by carriers.

### **Advance departure notices**

**60.** (1) (a) The carrier operating a foreign-going aircraft must give advance notice to the customs authority of –

- (i) the scheduled departure of the aircraft from a customs airport; and
- (ii) if the aircraft is to transport travellers to a destination outside the Republic, of all travellers bound for such destination who boarded or are scheduled to board the aircraft at that airport.

(b) An advance aircraft departure notice referred to in paragraph (a)(i) and an advance travellers departure notice referred to in paragraph (a)(ii) must be submitted within a timeframe as may be prescribed by rule before the scheduled departure of the aircraft from a customs airport, whether to another customs airport or to a destination outside the Republic.

(2) (a) Each cargo reporter responsible for cargo loaded or to be loaded on board a foreign-going aircraft at a customs airport for export from the Republic must give advance notice to the customs authority of that outgoing cargo.

(b) An advance air cargo departure notice must be submitted within a timeframe as may be prescribed by rule before the scheduled departure of that aircraft from that customs airport, whether to another customs airport or to a destination outside the Republic.

(c) Paragraphs (a) and (b) do not apply in respect of cargo that is to be transhipped in accordance with Chapter **10**. In such a case the transshipment clearance declaration or document regarded to be a transshipment clearance declaration in terms of section **235** must be regarded to be the advance air cargo departure notice referred to in paragraph (a).

(3) This section applies only to foreign-going aircraft operated by carriers.

### **Permissions to depart**

**61.** (1) No foreign-going aircraft may depart from a customs airport without a permission to depart issued by the customs authority.

(2) An application for a permission to depart must be submitted to the customs authority –

- (a) in the manner as may be prescribed by rule; and
- (b) be accompanied or supported by such documents as may be required by rule or in terms of a tax levying Act or other legislation applicable to the departure of aircraft from a customs airport.<sup>52</sup>

(3) No permission to depart may be issued –

- (a) unless section **60** has been complied with, in the case of an aircraft operated by a carrier; or
- (b) if the aircraft has been detained, seized or confiscated, or if the aircraft has on board goods that have been detained, seized or confiscated, in terms of –
  - (i) this Act or a tax levying Act; or
  - (ii) other legislation or a court order and the customs authority has been informed of the detention, seizure or confiscation.

(4) If an aircraft in respect of which a permission to depart has been issued in terms of subsection (1) does not depart within a timeframe as may be prescribed by rule after

<sup>52</sup> These documents include safety certificates, departure clearances by the airport authority, Home Affairs certificates, Post Office certificates, income tax forms, etc.

the permission was issued, the permission lapses and a new permission to depart must be obtained before the aircraft may depart.

(5) This section applies to all foreign-going aircraft.

### **Departure reports and cargo manifests**

**62.** (1) The departure of a foreign-going aircraft from a customs airport to another customs airport or a destination outside the Republic must be reported to the customs authority –

- (a) by the port authority managing that airport; and
- (b) if the aircraft –
  - (i) is an aircraft operated by a carrier, by the carrier unless the customs authority permits otherwise; or
  - (ii) is not an aircraft operated by a carrier, by the on-board operator of the aircraft unless the customs authority permits otherwise.

(2) An aircraft departure report referred to in subsection (1) must be submitted –

- (a) within a timeframe as may be prescribed by rule after the departure of the aircraft from that airport; and
- (b) whether or not the aircraft has goods or travellers on board.

(3) (a) The carrier operating a foreign-going aircraft departing from a customs airport to another customs airport or a destination outside the Republic must submit to the customs authority –

- (i) a report of all travellers and crew on board the aircraft bound for a destination outside the Republic; and
- (ii) a manifest of all cargo on board the aircraft intended for export.

(b) An air travellers departure report referred to in paragraph (a)(i) and a manifest referred to in paragraph (a)(ii) must be submitted within a timeframe as may be prescribed by rule after the departure of the aircraft from that airport.

(4) Subsection (1) applies to all foreign-going aircraft and subsection (3) applies only to foreign-going aircraft operated by carriers.

**Part 3: Reporting requirements for arriving and departing cross-border trains<sup>53</sup>**

**Advance arrival notices**

**63.** (1) The carrier who, on the Republic's side of the border, will be operating a cross-border train must give advance notice to the customs authority –

- (a) of the scheduled arrival of the train in the Republic;
- (b) if the train is transporting travellers bound for the Republic, of the scheduled arrival of those travellers in the Republic; and
- (c) if the train is transporting cargo bound for the Republic, of the scheduled arrival of that cargo in the Republic.

(2) An advance train arrival notice referred to in subsection (1)(a), an advance rail traveller arrival notice referred to in subsection (1)(b) and an advance rail cargo arrival notice referred to in subsection (1)(c), must –

- (a) be submitted within a timeframe as may be prescribed by rule; and
- (b) be submitted either separately, simultaneously or as a combined notice, as may be prescribed by rule.

**Arrival reports and cargo manifests**

**64.** (1) (a) The carrier operating a cross-border train that has entered the Republic must report to the customs authority the arrival of the train at each railway station after it entered the Republic where travellers will disembark or cargo will be offloaded or a railway carriage will be detached.

(b) A train arrival report referred to in paragraph (a) must be submitted within a timeframe as may be prescribed by rule after the arrival of the train at a railway station referred to in that paragraph.

(2) (a) If a cross-border railway carriage that forms or has formed part of a cross-border train that has entered the Republic arrives at a railway station, the carrier operating that railway carriage must submit to the customs authority –

- (i) a report of any travellers and crew who entered the Republic on board that railway carriage and are disembarking from the railway carriage at that railway station; and
- (ii) a manifest of any imported cargo on board that railway carriage to be off loaded at that railway station.

(b) A rail travellers arrival report referred to in paragraph (a)(i) and a manifest referred to in paragraph (a)(ii) must be submitted within a timeframe as may be prescribed by rule after the arrival of the railway carriage at a railway station referred to in

<sup>53</sup> Note that the prescribed minimum periods for submission of advance arrival and departure notices may on good grounds shown be shortened in specific cases in terms of section **876** and that the timeframes for submission of arrival and departure reports and cargo manifests may be extended in terms of section **875**.

that paragraph.

### **Advance departure notices**

**65.** (1) The carrier operating a cross-border train on a voyage to a destination outside the Republic must give –

- (a) advance notice to the customs authority –
  - (i) of the scheduled departure of the train to a destination outside the Republic;
  - (ii) if the train is to transport travellers to a destination outside the Republic, of all travellers expected to be on board the train when the train crosses the border out of the Republic; and
  - (iii) if the train is to transport cargo to a destination outside the Republic, of all cargo expected to be on board the train when the train crosses the border out of the Republic; and
- (b) such updates as may be prescribed by rule of its advance rail traveller departure notice referred to in paragraph (a)(ii) and of its advance rail cargo departure notice referred to in paragraph (a)(iii) as the train progresses on its voyage to the border.

(2) An advance train departure notice referred to in subsection (1)(a)(i), an advance rail travellers departure notice referred to in subsection (1)(a)(ii) and an advance rail cargo departure notice referred to in subsection (1)(a)(iii), and any updates of such notices referred to in subsection (1)(b), must be submitted at such times as may be prescribed by rule.

### **Departure reports and cargo manifests**

**66.** (1) (a) The carrier operating a cross-border train on a voyage to a destination outside the Republic must report to the customs authority the departure of the train from each railway station where –

- (i) goods or travellers or cargo bound for a destination outside the Republic are taken on board that train; or
- (ii) a cross-border railway carriage transporting such travellers or cargo is attached to that train.

(b) A train departure report must be submitted within a timeframe as may be prescribed by rule after the departure of the train from a railway station referred to in paragraph (a).

(2) (a) If a cross-border train referred to in subsection (1) is to transport travellers to a destination outside the Republic, the carrier operating the train must submit a report to the customs authority –

- (i) of all such outgoing travellers and crew on board the train when the train departs from the first licensed rail travellers terminal on its voyage to its destination outside the Republic; and
- (ii) of all such outgoing travellers and crew on board the train when the train departs from the last licensed rail travellers terminal on its voyage to its destination outside the Republic.

(b) A rail travellers departure report must be submitted within a timeframe as may be prescribed by rule after the departure of the train from a licensed rail travellers terminal referred to in paragraph (a)(i) or (ii).

(3) (a) If a cross-border train referred to in subsection (1) is to transport cargo to a destination outside the Republic, the carrier operating the train must submit a manifest to the customs authority –

- (i) of all such outgoing cargo on board the train when the train departs from the first licensed rail cargo terminal on its voyage to its destination outside the Republic; and
- (ii) of all such outgoing cargo on board the train when the train departs from the last licensed rail cargo terminal on its voyage to its destination outside the Republic.

(b) A manifest of outgoing cargo must be submitted within a timeframe as may be prescribed by rule after the departure of the train from a licensed rail cargo terminal referred to in paragraph (a)(i) or (ii).

#### ***Part 4: Reporting requirements for arriving and departing buses<sup>54</sup>***

##### **Advance road travellers arrival notices**

**67.** (1) The carrier operating a bus transporting travellers bound for the Republic must give advance notice to the customs authority of the scheduled arrival of those travellers in the Republic.

(2) An advance road travellers arrival notice referred to in subsection (1) must be submitted within a timeframe as may be prescribed by rule.

(3) This section applies only to buses operated by carriers.

##### **Road travellers arrival reports**

**68.** (1) The on-board operator of a bus entering the Republic must, upon arrival at the land border-post where the bus enters the Republic, submit to the customs authority at that border-post a traveller arrival report of all travellers and crew on board the bus.

<sup>54</sup> Note that the prescribed minimum periods for submission of advance arrival and departure notices may on good grounds shown be shortened in specific cases in terms of section **876**.

- (2) This section applies to all buses whether or not operated by carriers.

#### **Advance road travellers departure notices**

**69.** (1) The carrier operating a bus scheduled to transport travellers to a destination outside the Republic, must give advance notice to the customs authority of the scheduled departure of those travellers from the Republic.

(2) An advance road travellers departure notice referred to in subsection (1) must be submitted within a timeframe as may be prescribed by rule before the bus reaches the land border-post where it will leave the Republic.

- (3) This section applies only to buses operated by carriers.

#### **Road travellers departure reports**

**70.** (1) The on-board operator of a bus transporting travellers to a destination outside the Republic must upon arrival at the land border-post where the bus will leave the Republic submit to the customs authority at that land border-post a report of all travellers and crew on board the bus.

- (2) This section applies to all buses whether or not operated by carriers.

#### ***Part 5: Reporting requirements for trucks entering or leaving Republic<sup>55</sup>***

#### **Advance road cargo arrival notices**

**71.** (1) The carrier operating a truck due to enter the Republic with cargo bound for the Republic must give advance notice to the customs authority of the scheduled arrival of that cargo in the Republic.

(2) An advance road cargo arrival notice referred to in subsection (1) must be submitted within a timeframe as may be prescribed by rule.

- (3) This section applies only to trucks operated by carriers.

#### **Manifests of incoming road cargo**

<sup>55</sup> Note that the prescribed minimum periods for submission of advance arrival and departure notices may on good grounds shown be shortened in specific cases in terms of section **876**.



**72.** (1) The on-board operator of a truck entering the Republic with incoming cargo must upon arrival at the land border-post where the truck enters the Republic submit to the customs authority at that land border-post a manifest of the cargo on board the truck.

(2) This section applies to all trucks whether or not operated by carriers.

#### **Advance notices of outgoing road cargo**

**73.** (1) The carrier operating a truck in which cargo is to be exported from the Republic, must give advance notice to the customs authority of that outgoing cargo within a timeframe as may be prescribed by rule before that truck reaches the land border-post where it will leave the Republic.

(2) This section applies to only to trucks operated by carriers.

#### **Manifests of outgoing road cargo**

**74.** (1) The on-board operator of a truck in which cargo is to be exported from the Republic must upon arrival at the land border-post where the bus will leave the Republic submit to the customs authority at that land border-post a manifest of all cargo on board the truck.

(2) This section applies to all trucks whether or not operated by carriers.

### ***Part 6: Cargo outturn reports by licensees<sup>56</sup>***

#### **Definition**

**75.** In this Part “**vessel**” means –

- (a) a foreign-going vessel; or
- (b) a coasting vessel transporting goods under a customs procedure.

#### **Outturn reports of containers off-loaded from and loaded on board vessels at sea cargo terminals**

**76.** (1) The licensee of a sea cargo terminal must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of all containers, including empty containers, offloaded from each vessel at that terminal.

(2) The licensee of a sea cargo terminal must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of all containers, including empty containers, loaded on board each vessel at that terminal.

<sup>56</sup> Note that timeframes prescribed for purposes of this Part may on good grounds shown be extended in specific cases in terms of section **875**.

**Outturn reports of break bulk cargo and bulk cargo offloaded from or loaded on board vessels at sea cargo terminals**

77. (1) The licensee of a sea cargo terminal must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of all break bulk cargo and all bulk cargo offloaded from each vessel at that terminal.

(2) The licensee of a sea cargo terminal must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of all break bulk cargo and all bulk cargo loaded on board each vessel at that terminal.

**Outturn reports of containers removed from and received at sea cargo terminals and container depots**

78. (1) The licensee of a sea cargo terminal must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of –

- (a) all containers containing imported goods removed from that terminal; and
- (b) all containers containing goods destined for export received at that terminal.

(2) The licensee of a container depot must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of –

- (a) all containers containing imported goods received at that depot; and
- (b) all containers containing goods destined for export removed from that depot.

**Outturn reports of cargo unpacked from or packed into containers at container depots**

79. (1) The licensee of a container depot must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of –

- (a) all imported cargo unpacked from a container at that depot; and
- (b) all cargo destined for export packed into a container at that depot.

(2) An outturn report referred to in subsection (1)(a) or (b) must include details of any discrepant packages found –

- (a) when unpacking the container; or
- (b) when packing the container.

(3) The licensee of a container depot must notify the customs authority of any cargo remaining at the depot for more than a prescribed period after their delivery to the depot for export.

### **Outturn reports of cargo unloaded from or loaded on board aircraft at air cargo terminals**

**80.** The licensee of an air cargo terminal must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of –

- (a) all cargo unloaded from each aircraft at that terminal; and
- (b) all cargo loaded on board each aircraft at that terminal.

### **Outturn reports of cargo unpacked or packed at air cargo depots**

**81.** (1) The licensee of an air cargo depot must submit to the customs authority, within such timeframes as may be prescribed by rule, outturn reports in respect of –

- (a) all imported cargo received and deconsolidated or unpacked at that depot; and
- (b) all cargo destined for export packed or consolidated at that depot.

(2) An outturn report referred to in subsection (1)(a) or (b) must include details of any discrepant packages found.

(3) The licensee of an air cargo depot must notify the customs authority of any cargo remaining at the depot for more than a prescribed period after their delivery to the depot for export.

### **Outturn reports of cargo with no transport documents**

**82.** The licensee of a sea cargo terminal, air cargo terminal, container depot or air cargo depot must submit to the customs authority, within such timeframes as may be prescribed by rule, separate outturn reports in respect of any cargo referred to in sections **77**, **79**, **80** or **81** for which that licensee has not received a transport document.

### **Reporting of short or excess cargo**

**83.** The licensee of a sea cargo terminal, container depot, air cargo terminal or air cargo depot that off-loads, unpacks or deconsolidates any imported goods as contemplated in sections **77**, **79**, **80** and **81** must submit to the customs authority, within such timeframes as may be prescribed by rule, separate outturn reports in respect of any goods found to be short or in excess of the quantities specified in the relevant transport document against which the goods were examined, unpacked or deconsolidated.

### **Reporting of cargo in other circumstances**

**84.** (1) The Commissioner may by rule prescribe any additional outturn reports as may be necessary for the effective customs control of cargo imported into or destined for export from the Republic, including outturn reports in respect of –

- (a) cargo imported or destined for export –
  - (i) on board cross-border railway carriages;
  - (ii) on board trucks; or
  - (iii) by means of cross-border pipelines, cable cars or conveyor belts;
- (b) electricity imported or exported through cross-border transmission lines; and
- (c) the packing, unpacking, consolidation or deconsolidation of goods in customs controlled areas as may be specified in the rules..

**Disclosure of advance cargo arrival notice information to licensees of cargo terminals and depots**

**85.** The customs authority may disclose to the licensee of a sea or air cargo terminal, container depot or air cargo depot the following information in an advance cargo arrival notice submitted to it in relation to any cargo, to enable that licensee to submit outturn reports contemplated in this Part in relation to that cargo:

- (a) the transport document number issued by the cargo reporter;
- (b) the transport document number issued by the cargo reporter with whom the cargo has been co-loaded;
- (c) a description of the cargo;
- (d) the marks and numbers of the cargo;
- (e) the total number of containers or packages;
- (f) the gross weight of the cargo;
- (g) other information as may be prescribed by rule.

**Unpacking of cargo**

**86.** The licensee of an air cargo terminal, container depot or air cargo depot where cargo is deconsolidated and unpacked, must for purposes of effectively complying with this Part ensure that –

- (a) cargo is unpacked against –
  - (i) a transport document issued in respect of that cargo and provided to the licensee by the cargo reporter; or
  - (ii) the information in the advance cargo arrival notice relating to that cargo and provided to the licensee in terms of section **85**;
- (b) consolidated cargo is unpacked to the lowest consignee level;
- (c) any outturn report submitted in respect of that cargo reflects all the cargo with reference to the transport document number issued in respect of that cargo; and
- (d) the transport document number on the release notification received by the licensee in respect of that cargo –

- (i) correlates with the transport document against which the cargo was unpacked; and
- (ii) is the same as the transport document number reflected on any outturn report submitted in respect of that cargo.

### ***Part 7: Other matters***

#### **Submission of notices, reports and manifests in terms of this Chapter**

**87.** (1) An advance arrival or departure notice, an arrival or departure report or a manifest referred to in Parts 2 to 5, and any update of an advance notice, must –

- (a) be on a form as may be prescribed by rule and contain the information required on the prescribed form;
- (b) be accompanied or supported by any documents as may be required in terms of this Act, a tax levying Act or other legislation, or as may be prescribed by rule; and
- (c) be submitted electronically in accordance with section 879 unless the person required to submit the notice, report, manifest or update falls within a category of persons authorised by rule to submit documents manually in paper format to the Customs Office serving the relevant place of entry or exit.

(2) An outturn report referred to in Part 6 must –

- (a) be on a form as may be prescribed by rule and contain the information required on the prescribed form; and
- (b) be submitted electronically in accordance with section 879.

#### **Reporting obligations of carriers not located in the Republic**

**88.** An obligation placed in terms of this Chapter on a carrier to submit to the customs authority an advance arrival or departure notice, arrival or departure report, manifest or update of an advance notice, or any other information, must, in the case of a carrier who is not located in the Republic,<sup>57</sup> be complied with either by the carrier or that carrier's registered agent in the Republic.

#### **Exclusions and exemptions**

**89.** The Commissioner may –

- (a) by rule exclude from the application of any of or all the provisions of this Chapter –
  - (i) any category of vessels, aircraft, trains, railway carriages, buses or trucks;
  - (ii) any category of persons, travellers or crew; or
  - (iii) any category of goods or cargo; or
- (b) on justifiable grounds exempt<sup>58</sup> –

<sup>57</sup> See section 1(3)(a).

<sup>58</sup> See section 883.

- (i) a specific vessel, aircraft, train, railway carriage, bus or truck from the application of any of or all the provisions of this Chapter;
- (ii) a specific person from complying with any of or all the provisions of this Chapter; or
- (iii) the carrier operating a specific vessel, aircraft, train, railway carriage, bus or truck, or the on-board operator of a specific vessel, aircraft, bus or truck, from complying with any of or all the provisions of this Chapter.

### **Rules to facilitate implementation of this Chapter**

**90.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) the form and format of –
  - (i) advance arrival and departure notices;
  - (ii) arrival and departure reports;
  - (iii) manifests of inbound and outbound cargo;
  - (iv) updates of advance notices; and
  - (v) outturn reports;
- (b) the information to be furnished on those forms;
- (c) the reporting periods for which outturn reports must be submitted;
- (d) procedures, time limits and conditions for the amendment or replacement of such advance notices, arrival and departure reports, manifests, updates and outturn reports;
- (e) an advance arrival and departure reporting system for foreign-going vessels or aircraft not operated by carriers;
- (f) a cargo reporting verification and acquittal system;
- (f) methods of determining quantities of cargo for reporting purposes; and
- (g) any general conditions applicable to an exclusion or exemption referred to in section **89**, the circumstances in which any such exclusion or exemption applicable to a specific vessel, aircraft, train, railway carriage, bus or truck may be withdrawn and procedures for the withdrawal of any such exclusion or exemption.

## **CHAPTER 4**

### **REPORTING REQUIREMENTS FOR DOMESTIC VESSELS<sup>59</sup>**

#### **Purpose of this Chapter**

<sup>59</sup> Non-compliance with the reporting and other requirements of this Chapter is not a criminal offence but may as non-prosecutable breaches of this Act attract fixed amount penalties in terms of Chapter **37**.

- 91.** The purpose of this Chapter is to establish reporting requirements for –
- (a) the arrival and departure of domestic vessels at customs seaports; and
  - (b) the loading of cargo on board and the off-loading of cargo from coasting vessels at customs seaports.<sup>60</sup>

#### **Arrival and departure of domestic vessels and cargo on board domestic vessels**

- 92.** For the purposes of this Act a domestic vessel, or cargo on board a domestic vessel, must be regarded as –
- (a) arriving at a customs seaport when the vessel, upon reaching the seaport, docks for the first time whether inside the seaport or at a docking facility outside the seaport; or
  - (b) departing from a seaport when the vessel undocks to move out of or away from the seaport.

#### **Arrival reports for domestic vessels**

- 93.** (1) The arrival of a domestic vessel at a customs seaport must be reported to the customs authority within a timeframe as may be prescribed by rule after the arrival of the vessel at that seaport.

- (2) A vessel arrival report in terms of subsection (1) must be submitted –
- (a) if the vessel –
    - (i) is a vessel operated by a carrier, by the carrier unless the customs authority permits otherwise; or
    - (ii) is not a vessel operated by a carrier, by the on-board operator of the vessel unless the customs authority permits otherwise; and
  - (b) whether or not the vessel carries any cargo.

#### **Manifests of cargo to be discharged from coasting vessels**

- 94.** The carrier operating a coasting vessel arriving at a customs seaport must within a timeframe as may be prescribed by rule after the arrival of that vessel at that seaport submit to the customs authority a manifest of the cargo on board the vessel that will be discharged at that seaport, distinguishing between –
- (a) cargo transported under a customs procedure; and
  - (b) cargo that consists of goods in free circulation.

#### **Permissions to depart**

<sup>60</sup> Note that the prescribed timeframes for submission of arrival and departure reports may on good grounds shown be extended in specific cases in terms of section **875**.

**95.** (1) No domestic vessel may depart from a customs seaport without a permission to depart issued by the customs authority.<sup>61</sup>

(2) An application for a permission to depart must be submitted to the customs authority –

- (a) in the manner as may be prescribed by rule; and
- (b) be accompanied or supported by such documents as may be required by rule or in terms of a tax levying Act or other legislation applicable to the departure of vessels from a customs seaport.<sup>62</sup>

(3) No permission to depart may be issued if the vessel has been detained, seized or confiscated, or if the vessel has on board goods that have been detained, seized or confiscated, in terms of –

- (a) this Act or a tax levying Act; or
- (b) any other legislation or an order of court and the customs authority has been informed of the detention, seizure or confiscation.

(4) If a domestic vessel in respect of which a permission to depart has been issued in terms of subsection (1) does not depart within a timeframe as may be prescribed by rule after the permission was issued, the permission lapses and a new permission to depart must be obtained before the vessel may depart.

#### **Manifests of cargo on board departing coasting vessels**

**96.** The carrier operating a coasting vessel departing from a customs seaport must, at least the number of hours as may be prescribed by rule before the intended departure of the vessel from that seaport, submit to the customs authority a manifest of all cargo on board the vessel, distinguishing between –

- (a) cargo transported under a customs procedure; and
- (b) cargo that consists of goods in free circulation.

#### **Departure reports for domestic vessels**

**97.** (1) The departure of a domestic vessel from a customs seaport must be reported to the customs authority within a timeframe as may be prescribed by rule after the vessel departed from that seaport.

(2) A report in terms of subsection (1) must be submitted –

<sup>61</sup> Section **95** does not apply to vessels excluded from this Chapter in terms of section **101**(1) or in respect of which an exemption (transire) has been granted in terms of section **101**(2).

<sup>62</sup> These documents include departure clearances by the port authority, safety certificates, etc.



- (a) if the vessel –
  - (i) is a vessel operated by a carrier, by the carrier unless the customs authority permits otherwise; or
  - (ii) is not a vessel operated by a carrier, by the on-board operator of the vessel unless the customs authority permits otherwise; and
- (b) be submitted whether or not the vessel carries goods.

### **Submission of arrival or departure reports and manifests in terms of this Chapter**

**98.** An arrival or departure report or a manifest referred to in this Chapter must –

- (a) be on a form as may be prescribed by rule and contain the information required on the prescribed form;
- (b) be accompanied by any documents as may be prescribed by rule; and
- (c) be submitted electronically in accordance with section **879** unless the person required to submit the report or manifest falls within a category of persons authorised by rule to submit documents manually in paper format to the Customs Office serving the relevant customs seaport.

### **Reporting obligations of carriers not located in the Republic**

**99.** An obligation placed in terms of this Chapter on a carrier to submit to the customs authority an arrival or departure report or manifest, or any other information, must, in the case of a carrier who is not located in the Republic,<sup>63</sup> be complied with either by the carrier or that carrier's registered agent in the Republic.

### **Transires**

**100.** (1) The customs authority may issue a transire exempting a domestic vessel exclusively engaged in an activity as may be prescribed by rule, from any or all of the provisions of this Chapter.<sup>64</sup>

(2) The customs authority may by written notice to the on-board operator or owner of a domestic vessel in respect of which a transire has been issued in terms of subsection (2), or to any member of the crew on board the vessel, revoke that transire if –

- (a) a condition of the transire has been breached; or
- (b) the vessel is not or no longer exclusively engaged in the activity for which the transire was granted.

### **Exclusions and exemptions**

<sup>63</sup> See section 1(3)(a).

<sup>64</sup> For conditional exemptions see section **883**.

**101.** (1) The following vessels to the extent that they fall within the definition “**domestic vessel**” are excluded from this Chapter:

- (a) naval ships;
- (b) vessels which usually return to their place of departure in the Republic within 24. hours;
- (c) pleasure boats not exceeding 100 gross tonnes arriving from a seaport in the Republic or departing for another seaport in the Republic; and
- (d) any other category of vessels as may be prescribed by rule.

(2) The Commissioner may in on justifiable grounds exempt<sup>65</sup> a specific vessel from the application of any of or all the provisions of this Chapter.

### **Rules to facilitate implementation of this Chapter**

**102.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) the form and format of arrival and departure reports and cargo manifests and the information to be furnished on those forms;
- (b) a daily logbook of position for coasting vessels to be kept by the on-board operator of the vessel and the information that must be reflected in such a logbook;
- (c) the category of domestic vessels and the activities for which transires may be issued in terms of section **100**, application procedures for transires and renewal of transires, the contents of transires, any general conditions subject to which transires are issued, the period of validity of transires and procedures for the withdrawal of transires;
- (d) any general conditions applicable to an exclusion or exemption referred to in section **101**, the circumstances in which any such exclusion or exemption applicable to a specific vessel may be withdrawn and procedures for the withdrawal of any such exclusion or exemption;
- (e) conditions on which foreign-going vessels may transport goods in free circulation between ports in the Republic.

## **CHAPTER 5**

### **GENERAL CUSTOMS PRINCIPLES GOVERNING GOODS NOT IN FREE CIRCULATION**

#### **Purpose and application of this Chapter**

**103.** (1) The purpose of this Chapter is to determine general principles governing –

- (a) the clearance and release of goods for home use or a customs procedure;

<sup>65</sup> See section **883** for conditional exemptions.

- (b) the transport of goods not in free circulation and the loading of such goods for export; and
- (c) goods under a customs procedure.

(2) This Chapter applies to –

- (a) all goods imported into the Republic, irrespective of the purpose for which those goods were imported;
- (b) all goods destined for export from the Republic, irrespective of the purpose for which those goods are to be exported; and
- (c) all compensating products obtained from goods under a customs procedure.

(3) This Chapter applies subject to another provision of this Act applicable specifically to the home use of goods or specifically to a particular customs procedure, and in the event of any inconsistency between a provision of this Chapter and such other provision of this Act that other provision prevails.

***Part 1: General principles governing clearance of goods for home use or customs procedures***

**Clearance of imported goods**

**104.** (1) When goods are imported into the Republic the goods must, subject to sections **106**, **756** and **765**, be cleared for –

- (a) home use in terms of Chapter **8**;
- (b) home use under a customs procedure that provides for goods to be cleared for home use under that customs procedure;<sup>66</sup> or
- (c) a permissible customs procedure.

(2) Goods referred to in –

- (a) subsection (1)(a) must be cleared for home use in accordance with Chapter **8** and the other provisions of this Act applicable to the clearance of goods for home use in terms of that Chapter;
- (b) subsection (1)(b) must be cleared for home use under the relevant customs procedure in accordance with the provisions of this Act applicable to the clearance of goods for home use under that procedure; or

<sup>66</sup> The following customs procedures provide for goods to be cleared for home use under that procedure:

1. the temporary export procedure which in Parts **3** and **4** of Chapter **16** provides for re-imported unaltered goods to be cleared for home use under that procedure; and
2. the outward processing procedure which in Chapter **19** provides for outward processed compensating products when imported to be cleared for home use under that procedure.

- (c) subsection (1)(c) must be cleared for the required customs procedure in accordance with the provisions of this Act applicable to the clearance of goods for that specific procedure.

**When clearance declarations for goods imported through places of entry must be submitted<sup>67</sup>**

**105.** (1) For the purpose of clearing imported goods (other than accompanied or unaccompanied baggage) that are in terms of section **104** required to be cleared for home use or a customs procedure, a clearance declaration meeting the requirements of section **171(1)(a)** to (d) must be submitted to the customs authority –

- (a) if the goods were imported on board a foreign-going vessel, within three working days of arrival<sup>68</sup> of the goods at the customs seaport where the goods are to be off-loaded from the vessel;
- (b) if the goods were imported on board a foreign-going aircraft, within three working days of arrival of the goods at the customs airport where the goods are to be off-loaded from the aircraft;
- (c) if the goods were imported on board a cross-border railway carriage, within three working days of arrival of the goods at the licensed rail cargo terminal where the goods are to be off-loaded from the railway carriage;
- (d) if the goods were imported on board a vehicle, when the vehicle arrives at the land border-post where the goods will enter the Republic on board the vehicle;
- (e) if the goods were imported through a cross-border pipeline or by means of a cross-border cable car or conveyor belt, within such period as may be prescribed by rule;
- (f) if the goods were electricity imported through a cross-border transmission line, within such period as may be prescribed by rule; or
- (g) if the goods consist of –
  - (i) a vessel which entered the Republic under its own power, within three working days of arrival of the vessel at the first customs seaport where it called;
  - (ii) an aircraft which entered the Republic under its own power, within three working days of arrival of the aircraft at the first customs airport where it landed;
  - (iii) a locomotive or railway carriage which entered the Republic under its own power or on its own wheels, within three working days of arrival of the locomotive or railway carriage at the rail-border crossing where it entered the Republic; or

<sup>67</sup> Note that the prescribed timeframes for submission of clearance declarations may on good grounds shown be extended in specific cases in terms of section **875**.

<sup>68</sup> Section **50** determines when goods “arrive”.

(iv) a vehicle which entered the Republic under its own power or on its own wheels, when the vehicle arrives at the land border post where the vehicle enters the Republic;

(2) Subsection (1) may not be read as affecting section **170**.

(3) For the purpose of clearing items in a person's accompanied or unaccompanied baggage that are in terms of section **104** required to be cleared for home use or a customs procedure, a clearance declaration meeting the requirements of section **171(1)(a)** to (d) must be submitted to the customs authority in accordance with section **467**.

### **Certain categories of imported goods excluded from clearance requirements**

**106.** (1) The following categories of imported goods are excluded from sections **104** and **105** and goods falling within those categories are not required to be cleared in accordance with those sections, subject to subsection (4):<sup>69</sup>

- (a) goods which were on board a foreign-going vessel or aircraft or a cross-border railway carriage when the vessel, aircraft or railway carriage entered the Republic and which –
- (i) are not off-loaded or taken off the vessel, aircraft or railway carriage whilst the vessel, aircraft or railway carriage is in the Republic;
  - (ii) are not used on board the vessel, aircraft or railway carriage whilst the vessel, aircraft or railway carriage is in the Republic; and
  - (iii) remain on board the vessel, aircraft or railway carriage until the vessel, aircraft or railway carriage leaves the Republic;
- (b) vessels, aircraft, locomotives and railway carriages which –
- (i) upon entering the Republic automatically come under the temporary admission procedure in terms of section **274**;<sup>70</sup> or
  - (ii) left the Republic under the temporary export procedure in terms of section **389** and re-enter the Republic on the inbound leg of the procedure;<sup>71</sup>
- (c) reusable transport equipment which –
- (i) upon entering the Republic automatically come under the temporary admission procedure in terms of section **275**; or

<sup>69</sup> Exclusion of the goods listed in section **106** from clearance requirements does not have the effect of exempting the goods from customs control. The goods remain subject to customs control for as long as a condition stated in section **28** applies to the goods.

<sup>70</sup> Foreign trucks, buses and taxis entering the Republic are not excluded from clearance requirements, but may in terms of sections **255** and **256** be cleared for temporary admission in accordance with simplified clearance requirements.

<sup>71</sup> South African trucks, buses and taxis re-entering the Republic on the return leg of the temporary export procedure are not excluded from clearance requirements, but may in terms of sections **376** and **377** be cleared in accordance with a simplified clearance requirements.

- (ii) left the Republic under the temporary export procedure in terms of section **390** and re-enters the Republic on the inbound leg of that procedure;
- (d) goods entering the Republic on board –
  - (i) foreign-going vessels or aircraft or cross border trains referred to in section **321(1)(a)** as stores reasonably needed for that vessel or aircraft on its current voyage; or
  - (ii) foreign-going naval vessels or foreign-going naval or military aircraft as stores reasonably needed for that vessel or aircraft on its current voyage;
- (e) accompanied and unaccompanied baggage items of persons referred to in section **464(2)(a)** entering the Republic, other than those items that must in terms of section **467(1)** be cleared for home use or a customs procedure;
- (f) accompanied and unaccompanied baggage of persons referred to in section **464(3)(a)** entering the Republic, provided the baggage –
  - (i) remain on board the vessel or aircraft which brought it into the Republic until the vessel or aircraft leaves the Republic; or
  - (ii) are transferred under customs supervision to another foreign-going vessel or aircraft in which the baggage will leave the Republic;
- (g) goods in a single consignment with a customs value not exceeding R100, subject to subsection (2);
- (h) goods, including trade samples, which have no commercial value;
- (i) international postal articles of the following kinds imported into the Republic for delivery in the Republic by the South African Post Office:<sup>72</sup>
  - (i) letters, postcards, greeting cards, telegrams and other similar communications containing personal messages only;
  - (ii) printed papers not subject to any import taxes; and
  - (iii) literature for the blind;
- (j) human remains; or
- (k) any other category of goods as may be determined by rule.

(2) (a) If goods are imported in more than one consignment for delivery to the same addressee in the same calendar year, the exemption contained in subsection (1)(g) applies only to the extent that the combined customs value of the goods contained in the those consignments does not exceed R100.

(b) The exemption contained in subsection (1)(g) does not apply to accompanied and unaccompanied baggage of persons entering the Republic.

<sup>72</sup> International postal articles imported by private couriers must be dealt with as ordinary imported goods, but may be cleared in accordance with expedited clearance requirements in terms of Chapter **23**.

- (3) The customs authority may –
- (a) inspect or detain goods claimed to fall within an excluded category listed in subsection (1);<sup>73</sup> and
  - (b) require proof that the goods do fall within such an excluded category.

(4) This section does not apply to prohibited, restricted, sectorally controlled and counterfeit goods, and such goods must be dealt with in accordance with Chapters **34** and **35**.

### **Consequences in event of failure to clear goods imported through places of entry<sup>74</sup>**

**107.** (1) If no clearance declaration is submitted in terms of section **105**(1) or (3) within the period or at the time applicable to imported goods to which section **104** applies, or if such goods were diverted for home use before the period for submitting the clearance declaration has elapsed, the goods must –

- (a) be dealt with in accordance with section **559**(1), read with section **569**,<sup>75</sup> or
- (b) for tax purposes be regarded to be cleared for home use under Chapter **8**<sup>76</sup> if the goods were –
  - (i) diverted for home use; or
  - (ii) damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Chapter **24** –
    - (aa) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section **533**(1), **534**(1), **535**(1) or **536**(1); and
    - (bb) in the case of lost goods, that the goods, after having been lost, have not gone into home use.

(2) The onus to prove for purposes of this section that a clearance declaration to clear goods for home use or a customs procedure has been submitted to the customs authority within the period or at the time applicable to the goods, rests on the person who alleges this fact.

(3) Subsection (1) applies apart from any criminal proceedings that may be instituted, administrative penalty that may be imposed or other step that may be taken by the customs authority in terms of this Act for any breach of section **104** or **105**, which may include, where not inconsistent with this Act or other applicable legislation or otherwise inappropriate –

<sup>73</sup> See also section **735** for detention of such goods.

<sup>74</sup> For consequences when goods are imported otherwise than through places of entry, see section **44**.

<sup>75</sup> Removal of the goods to a state warehouse.

<sup>76</sup> For tax implications if goods are regarded to be cleared for home use under Chapter **8**, see section **153**.

- (a) seizing the goods in terms of Chapter **33**;
- (b) allowing the importer of the goods to abandon the goods to the Commissioner in accordance with Chapter **25**;
- (c) allowing or directing the importer –
  - (i) to remove the goods from the Republic; or
  - (ii) to destroy the goods under supervision of the customs authority or an organ of state designated by the customs authority.

### **Clearance of goods destined for export**

**108.** (1) All goods destined for export from the Republic must, subject to sections **110**, **756** and **765**, be cleared for export.

(2) Goods may in terms of subsection (1) be cleared for –

- (a) outright export in terms of the export procedure;<sup>77</sup>
- (b) export under a customs procedure that allows goods to be cleared for export under that procedure in terms of the export procedure;<sup>78</sup> or
- (c) export under a customs procedure that allows goods to be cleared for export under that procedure in accordance with an international clearance arrangement.<sup>79</sup>

(3) Goods referred to in –

- (a) subsection (2)(a) must be cleared for outright export in accordance with the provisions of this Act applicable to the clearance of goods for outright export;
- (b) subsection (2)(b) must be cleared for export in accordance with the provisions of this Act applicable to the clearance of goods for export under the relevant customs procedure; or
- (c) subsection (2)(c) must be cleared for export in accordance with the provisions of this Act giving effect to the relevant international arrangement.

### **When export clearance declarations for goods exported through places of exit must be submitted<sup>80</sup>**

<sup>77</sup> Chapter **15** provides for the export of goods under the export procedure. The export procedure covers the export of goods for outright export and various other customs procedures. See section **346(2)**.

<sup>78</sup> The following customs procedures provide for the export of goods under that procedure subject to clearance for export in terms of the export procedure:

1. the temporary admission procedure in terms of Chapter **11**, in relation to goods cleared and released for that procedure in terms of Part **2** of that Chapter;
2. the temporary export procedure in terms of Chapter **16**, in relation to goods cleared and released for that procedure in terms of Part **2** of that Chapter;
3. goods exported as compensating products under the inward processing procedure in terms of Chapter **17**; and
4. Goods exported under the outward processing procedure in terms of Chapter **19**.

<sup>79</sup> The temporary admission and temporary export procedures provide on the outbound leg of the procedure for the clearance of certain goods for export by way of a carnet issued in terms of an international customs arrangement.



**109.** (1) For the purpose of clearing goods (other than accompanied or unaccompanied baggage) that are in terms of section **108** required to be cleared for export, a clearance declaration meeting the requirements of section **171(1)(a)** to (d) must be submitted to the customs authority –

- (a) if the goods are to be exported by sea, not later than 48 hours before the goods are delivered to the sea cargo terminal where the goods will be loaded on board the foreign-going vessel in which the goods are to be exported;
- (b) if the goods are to be exported by air, not later than 24 hours before the goods are delivered to the air cargo terminal where the goods will be loaded on board the foreign-going aircraft in which the goods are to be exported;
- (c) if the goods are to be exported by rail, not later than 48 hours before the goods are delivered to the rail cargo terminal where the goods will be loaded on board a cross-border railway carriage in which the goods are to be exported;
- (d) if the goods are to be exported by road on board a truck, not later than six hours before the truck reaches the land border-post where the goods will be exported;
- (e) if the goods are to be exported through a cross-border pipeline or by means of a cross-border cable car or conveyor belt, within such period as may be prescribed by rule;
- (f) if the goods are electricity to be exported through a cross-border transmission line, within such period as may be prescribed by rule; or
- (g) if the goods consist of –
  - (i) a vessel leaving the Republic under its own power, before the vessel departs from a customs seaport to its destination outside the Republic;
  - (ii) an aircraft leaving the Republic under its own power, before the aircraft departs from a customs airport to a destination outside the Republic;
  - (iii) a locomotive or railway carriage leaving the Republic under its own power or on its own wheels, before the locomotive or railway carriage reaches the rail border crossing where the locomotive or railway carriage will cross the border out of the Republic; or
  - (iv) a vehicle leaving the Republic under its own power or on its own wheels, before the vehicle leaves the land border post where the vehicle will cross the border out of the Republic.

(2) In the case of containerised cargo, a clearance declaration meeting the requirements of section **171(1)(a)** to (d) may only be submitted after the container has been sealed.

<sup>80</sup> Note that the prescribed minimum time periods for submission of export clearance declarations may on good grounds shown be shortened in specific cases in terms of section **876**.

(3) For the purpose of clearing items in a person's accompanied or unaccompanied baggage that are in terms of section **108** required to be cleared for export, a clearance declaration meeting the requirements of section **171(1)(a)** to (d) must be submitted to the customs authority in accordance with section **472**.

### **Certain categories of goods destined for export excluded from export clearance requirements**

**110.** (1) The following categories of goods destined for export from the Republic are excluded from sections **108** and **109**, and such goods may, subject to subsection (4), be exported without submission of an export clearance declaration:<sup>81</sup>

- (a) Goods which were on board a foreign-going vessel or aircraft or a cross-border railway carriage when the vessel, aircraft or railway carriage entered the Republic and which –
  - (i) are not off-loaded or taken off the vessel, aircraft or railway carriage whilst the vessel, aircraft or railway carriage is in the Republic; and
  - (ii) remain on board the vessel, aircraft or railway carriage until the vessel, aircraft or railway carriage leaves the Republic;
- (b) vessels, aircraft, locomotives and railway carriages which –
  - (i) upon leaving the Republic automatically come under the temporary export procedure in terms of section **389**;<sup>82</sup> or
  - (ii) entered the Republic under the temporary admission procedure in terms of section **274** and leave the Republic on the outbound leg of the procedure;<sup>83</sup>
- (c) reusable transport equipment which –
  - (i) upon leaving the Republic automatically come under the temporary export procedure in terms of section **390**; or
  - (ii) entered the Republic under the temporary admission procedure in terms of section **275** and leaves the Republic on the outbound leg of the procedure;
- (d) goods under any of the following customs procedures to be exported under such procedure:
  - (i) the international transit procedure in terms of Chapter **9**;
  - (ii) the transshipment procedure in terms of Chapter **10**;
  - (iii) the tax free shop procedure in terms of Chapter **13**; or

<sup>81</sup> Exclusion of the goods listed in section **110** from export clearance requirements does not have the effect of exempting the goods from customs control. The goods remain subject to customs control for as long as a condition stated in section **28** applies to the goods.

<sup>82</sup> South African trucks, buses and taxis temporarily leaving the Republic are not excluded from export clearance requirements, but may in terms of sections **368** and **369** be cleared for temporary export in accordance with simplified clearance requirements.

<sup>83</sup> Foreign trucks, buses and taxis leaving the Republic on the outbound leg of the temporary admission procedure are not excluded from export clearance requirements, but may in terms of sections **261** and **262** be cleared in accordance with simplified clearance requirements.

- (iv) the stores procedure in terms of Chapter **14**;
- (e) goods which a foreign-going naval vessel or foreign-going navel or military aircraft takes on board in the Republic as stores reasonably needed for that vessel or aircraft on a voyage to a destination outside the Republic;
- (f) accompanied and unaccompanied baggage items of persons referred to in section **464(2)(a)** leaving the Republic, other than those items that must in terms of section **472(1)** be cleared for outright export or for export under a customs procedure applicable to the items;
- (g) accompanied and unaccompanied baggage of persons referred to in section **464(3)(a)** leaving the Republic, provided the baggage –
  - (i) is leaving the Republic on board the same vessel or aircraft which brought it into the Republic; or
  - (ii) was transferred under customs supervision from the vessel or aircraft in which the baggage entered the Republic to another foreign-going vessel or aircraft in which the baggage is to leave the Republic;
- (h) goods in a single consignment of a customs value not exceeding R100, subject to subsection (2);
- (i) goods, including trade samples, which have no commercial value;
- (j) international postal articles of the following kinds posted in the Republic and exported from the Republic through the South African Post Office:
  - (i) letters, postcards, greeting cards, telegrams and other similar communications containing personal messages only;
  - (ii) printed papers not subject to any import taxes; and
  - (iii) literature for the blind;<sup>84</sup>
- (k) human remains; or
- (l) any other category of goods as may be determined by rule.

(2) (a) If goods are destined for export in more than one consignment for delivery to the same addressee in the same calendar year, the exclusion contained in subsection (1)(h) applies only to the extent that the combined customs value of the goods contained in the those consignments does not exceed R100.

(b) The exemption contained in subsection (1)(h) does not apply to accompanied and unaccompanied baggage of persons leaving the Republic.

(3) The customs authority may –

<sup>84</sup> International postal articles to be exported by private couriers must be dealt with as if ordinary exported goods. See Part 1 of Chapter **23** for clearance of express delivery goods.

- (a) inspect or detain goods claimed to fall within an excluded category listed in subsection (1);<sup>85</sup> and
- (b) require proof that the goods do fall within such an excluded category.

(4) This section does not apply to prohibited, restricted, sectorally controlled and counterfeit goods and such goods must be dealt with in accordance with Chapters **34** and **35**.

**Consequences in event of failure to clear for export goods in free circulation<sup>86</sup> through places of exit<sup>87</sup>**

**111.** (1) If goods in free circulation to which section **108** applies are –

- (a) delivered to a cargo terminal referred to in section **109(1)(a)**, (b) or (c) without any clearance declaration having been submitted in terms of that section to clear the goods for export, the goods must be dealt with in accordance with section **559(1)(b)**, read with section **569**;<sup>88</sup> or
- (b) exported from the Republic without any clearance declaration having been submitted in terms of section **109** to clear the goods for export, the goods must for tax purposes be regarded to have been cleared for outright export.<sup>89</sup>

(2) The onus to prove for purposes of this section that a clearance declaration to clear goods for export has been submitted to the customs authority, rests on the person who alleges this fact.

(3) Subsection (1) applies apart from any criminal proceedings that may be instituted, administrative penalty that may be imposed or other step that may be taken by the customs authority in terms of this Act for any breach of section **108** or **109**, which may include, where not inconsistent with this Act or other applicable legislation or otherwise inappropriate –

- (a) seizing the goods in terms of Chapter **33**;
- (b) allowing the exporter of the goods to abandon the goods to the Commissioner in accordance with Chapter **25**; or
- (c) allowing or directing the exporter to destroy the goods under supervision of the customs authority or an organ of state designated by the customs authority.

<sup>85</sup> See also section **735** for detention of such goods.

<sup>86</sup> This section is confined to goods in free circulation as the consequences for goods exported under a customs procedure otherwise than in accordance with that procedure, are dealt with in section.....

<sup>87</sup> For consequences when goods are exported otherwise than through places of exit see section **44**.

<sup>88</sup> Removal of the goods to a state warehouse.

<sup>89</sup> For tax implications if goods in free circulation are regarded to be cleared for outright export, see section **157**.

### **Clearance substitutions before release of goods<sup>90</sup>**

**112.** (1) Goods that are cleared for home use may at any time before the release of the goods for home use be cleared for a permissible customs procedure.

(2) Goods that are cleared for a customs procedure may at any time before the release of the goods for that customs procedure be cleared for any other customs procedure or for home use, as may be permissible<sup>91</sup> in the circumstances.

(3) A clearance declaration to clear the goods for home use or a customs procedure in terms of subsection (1) or (2) submitted to and accepted by the customs authority in terms of section **171**(1) replaces the previous clearance declaration with effect from the date the previous clearance declaration was originally accepted by the customs authority in terms of that section.<sup>92</sup>

- (4) If a clearance of goods for –
- (a) home use is replaced in terms of subsection (3), the person who paid any import tax on the goods as a consequence of that clearance for home use is entitled to a refund of that tax subject to the applicable tax levying Act; or
  - (b) outright export is replaced in terms of that subsection, the person who received any refund of domestic tax on the goods as a consequence of that clearance for outright export must repay that refund to the Commissioner subject to the applicable tax levying Act.

### ***Part 2: General principles governing release of goods for home use or customs procedures***

#### **Clearance of goods precondition for release of goods**

**113.** No goods may be released for home use or a customs procedure unless the goods have been cleared for home use or that customs procedure, except where provided otherwise in this Act.<sup>93</sup>

#### **When release of goods must be refused<sup>94</sup>**

**114.** (1) The customs authority must refuse the release of goods cleared for home use or a customs procedure –

<sup>90</sup> This section applies only to clearance substitutions **before** release of the goods. For clearance substitutions of goods **already** released for home use, see section **122**, and for clearance of goods under a customs procedure for another customs procedure, see section **125**.

<sup>91</sup> See definition of “permissible” in relation to a customs procedure and in relation to home use.

<sup>92</sup> If the goods are only partially cleared for another customs procedure or for home use, the existing clearance declaration must be amended in terms of section **174**(2) to apply to that part of the goods that remain cleared for the existing procedure or for home use.

<sup>93</sup> Exceptions to this principle contained in Chapter **23** which provides for expedited release of goods.

<sup>94</sup> For consequences if release of goods is refused, see section **121**.

- (a) if the clearance or release of the goods for home use or that customs procedure –
  - (i) is not permissible in terms of this Act or a tax levying Act; or
  - (ii) results in a breach of this Act, a tax levying Act or any other legislation applicable to the goods;
- (b) if the goods are to be removed to a state warehouse in terms of section **559**(1) or (2), read with section **569**, in order to be dealt with in accordance with Chapter **26**; or
- (c) if the goods were seized or confiscated in terms of –
  - (i) this Act<sup>95</sup> or a tax levying Act; or
  - (ii) any other legislation or an order of court and the customs authority has been informed of the seizure or confiscation.

(2) (a) The customs authority may, despite anything to the contrary in subsection (1) but subject to section **120**, release goods on an assumption that facts and circumstances presented by the person clearing the goods are correct.<sup>96</sup>

(b) Goods may not be released in terms of paragraph (a) if the customs authority is aware of the fact that the presentation of facts and circumstances is incorrect.

(3) A refusal to release goods in terms of subsection (1)(a) or (b) is a ground for the detention of the goods in terms of section **735** if the goods are not already detained on any other ground.

#### **When release of goods may be refused<sup>97</sup>**

**115.** (1) The customs authority may refuse the release of goods for home use or a customs procedure if such refusal is necessary to give effect to –

- (a) this Act or a tax levying Act; or
- (b) national legislation or policy on –
  - (i) international trade;
  - (ii) the protection of public health;
  - (iii) the protection of the environment; or
  - (iv) public safety.

(2) A refusal to release goods in terms of subsection (1) is a ground for the detention of the goods in terms of section **735** if the goods are not already detained on any other ground.

<sup>95</sup> See Chapters **33**, **34** and **35** for the seizure and confiscation of goods in terms of this Act, including the conditions for terminating seizures and confiscations.

<sup>96</sup> Release of goods on the assumption that the self-assessment of tax payable on goods is correct does not affect the customs authority's power to do an assessment after the release. See Chapter **5** of the Customs Duty Act.

<sup>97</sup> For consequences of refusal to release goods, see section **121**.

### **When release of goods may or must be withheld**

**116.** (1) The customs authority may withhold the release of goods for home use or a customs procedure until –

- (a) a requirement of this Act, a tax levying Act or any other legislation applicable to the goods or the clearance of the goods has been complied with;
- (b) any pre-condition imposed in terms of section **118** for the release of the goods has been met;
- (c) any tax or any other money payable to the Commissioner in respect of those goods has been paid to the Commissioner; or
- (d) any security required for the payment of any such tax or other money in respect of the goods has been provided to the Commissioner.

(2) The customs authority must withhold the release of goods for home use or a customs procedure whilst the goods are detained in terms of –

- (a) this Act<sup>98</sup> or a tax levying Act; or
- (b) any other legislation or an order of court and the customs authority has been informed of the detention.

(3) Withholding of the release of goods in terms of subsection (1) is a ground for the detention of the goods in terms of section **735** if the goods are not already detained on any other ground.

### **Release of goods pending technical analysis, expert advice or civil or criminal proceedings**

**117.** (1) The customs authority may not delay the release of goods cleared for home use or a customs procedure by reason only that –

- (a) an inspection of the goods require a technical analysis of, or expert advice on, the goods or any matter relating to the goods;
- (b) civil proceedings relating to the goods between the Commissioner and any other person are pending;
- (c) an offence involving those goods has allegedly been committed and criminal investigations or proceedings relating to those goods are pending; or
- (d) the goods are the subject of dispute resolution in terms of Chapter **36**.

<sup>98</sup> See Chapters **33**, **34** and **35** for the detention of goods in terms of this Act, including the conditions for terminating seizures and confiscations.

(2) Subsection (1) may not be read as affecting or preventing the implementation of sections **114**, **115** and **116**.

### **Preconditions for release of goods**

**118.** The customs authority may impose such preconditions for the release of goods for home use or a customs procedure as may be necessary to ensure that a provision of this Act, a tax levying Act or any other applicable legislation is complied with or that any import or export tax payable or that may become payable on the goods is or will be paid, including conditions requiring the giving of security.

### **Conditional release**

**119.** The release of goods for home use or a customs procedure is subject to such conditions –

- (a) as the customs authority may in a specific case impose to ensure compliance with a provision of this Act, a tax levying Act or any other applicable legislation; and
- (b) as may be prescribed by rule.

### **When release of goods may be withdrawn<sup>99</sup>**

**120.** (1) The customs authority may withdraw the release of goods for home use or a customs procedure –

- (a) if the clearance or release of the goods for home use or that customs procedure –
  - (i) was not permissible in terms of this Act; or
  - (ii) resulted in a breach of this Act, a tax levying Act or any other legislation applicable to the goods;
- (b) if any condition subject to which the goods were released is breached;
- (c) if, in the case of goods released for a customs procedure –
  - (i) the goods are diverted for home use; or
  - (ii) a provision of this Act or a tax levying Act applicable to that procedure is breached;
- (d) if withdrawal of the release is necessary to give effect to –
  - (i) this Act or a tax levying Act;<sup>100</sup> or
  - (ii) national legislation or policy on –
    - (aa) international trade;
    - (bb) the protection of public health;
    - (cc) the protection of the environment; or
    - (dd) public safety;

<sup>99</sup> For consequences of withdrawal of a release see section **121**.

<sup>100</sup> Included here are the conditions and requirements contained in the Customs Tariff subject to which goods may be cleared and released for specific customs procedures.



- (e) if the goods are detained, seized or confiscated in terms of this Act, a tax levying Act, any other legislation or an order of court; or
- (f) in any other circumstances specifically provided for in this Act or a tax levying Act.

(2) The release of goods may not be withdrawn in terms of subsection (1) on account of a clearance declaration that is invalid in terms of section 172 if the clearance declaration can be and is validated by an amendment in terms of section 174.

(4) A withdrawal of a release of goods is a ground for the detention of the goods in terms of section 735 if the goods are not already detained on any other ground.

### **Consequences of refusal to release or withdrawal of release of goods**

**121.** (1) If the customs authority refuses to release goods for home use or a customs procedure in terms of section 114(1) or (2) or 115 or withdraws the release of goods for home use or a customs procedure in terms of section 120, it may, depending on the circumstances, allow the person clearing the goods –<sup>101</sup>

- (a) to clear the goods in terms of section 112(1) or (2) for home use or a specific customs procedure that will not render release of the goods subject to a refusal; or
- (b) to amend the clearance declaration in terms of section 174 if release of the goods was refused or withdrawn because of a rectifiable error or omission on the clearance declaration.

(2) When allowing a person to clear goods or to amend a clearance declaration in terms of subsection (1), the customs authority may require the goods to be cleared or a clearance declaration to be amended within a period determined by it.

(3) Any import or export tax paid on the goods as a consequence of a clearance that is replaced in terms of subsection (1)(a) may subject to the applicable tax levying Act be refunded to the person who paid that tax if the customs authority in terms of that subsection allows the goods to be cleared for a customs procedure that has a tax free status in relation to such import or export tax.<sup>102</sup>

(4) This section applies apart from any criminal proceedings that may be instituted, administrative penalty that may be imposed or other step that may be taken by the customs authority in terms of this Act if the release was refused or withdrawn because of a breach of this Act or a tax levying Act committed in connection with the goods, which step

<sup>101</sup> For person clearing goods, see section 166.

<sup>102</sup> For tax status of goods under the various customs procedures, see Chapter 6.

may include, where not inconsistent with this Act or other applicable legislation or otherwise inappropriate –

- (a) applying section **559(2)** to the goods;
- (b) seizing the goods in terms of Chapter **33**;
- (c) allowing the person who cleared the goods to abandon the goods to the Commissioner in accordance with Chapter **25**;
- (d) allowing or directing the person who cleared the goods –
  - (i) to remove the goods from the Republic, in the case of imported goods; or
  - (ii) to destroy the goods under supervision of the customs authority or an organ of state designated by the customs authority.

### **Clearance and release substitutions for goods released for home use<sup>103</sup>**

**122.** (1) Goods that have been released for home use may, despite such release, be cleared and, subject to sections **114** and **115**, released for a permissible customs procedure.

(2) Goods that have been released for home use may be cleared and released for a customs procedure in terms of subsection (1) only if the clearance declaration is submitted to and accepted by the customs authority in terms of section **171(1)** within 90 calendar days from the date of release of the goods for home use.

(3) A clearance declaration to clear the goods for a customs procedure submitted to and accepted by the customs authority in terms of section **171(1)** replaces the home use clearance declaration with effect from the date the home use clearance declaration was originally accepted by the customs authority in terms of that section.<sup>104</sup>

(4) If the clearance and release of goods for home use is replaced in terms of subsection (1) the person who paid any import tax on the goods as a consequence of the previous clearance is entitled to a refund subject to the applicable tax levying Act.

### **Effect of release of goods for home use or customs procedures**

**123.** (1) (a) Goods unconditionally released for home use become, upon their release, goods in free circulation.

(b) Goods conditionally released for home use become, upon compliance with the condition, goods in free circulation.

<sup>103</sup> See section **112** for clearance substitutions of goods cleared for home use or a customs procedure *before* release of the goods, and section **174** for amendments to clearance declarations.

<sup>104</sup> If the goods are only partially cleared for a customs procedure, the existing clearance declaration must be amended in terms of section **174(2)** to apply to that part of the goods that remain cleared for home use.

(2) Goods released for a customs procedure remain subject to this Act despite the release and may not be dealt with otherwise than in accordance with –

- (a) the provisions of this Act or a tax levying Act<sup>105</sup> applicable to that customs procedure; and
- (b) any conditions as may be applicable to the goods in terms of section **119**.

### ***Part 3: General principles governing goods under customs procedures***

#### **Commencement and ending of customs procedures**

**124.** (1) A customs procedure in relation to goods –

- (a) commences when the goods come under that customs procedure; and
- (b) ends when that customs procedure is completed,<sup>106</sup> unless that procedure is interrupted by an occurrence referred to in subsection (2).

(2) A customs procedure in relation to goods ends before its completion if –

- (a) the release of the goods for that customs procedure is refused or withdrawn;
- (b) the goods are for tax purposes regarded to be cleared for home use in terms of Chapter **8** or for outright export;
- (c) the goods revert or are for tax purposes regarded to have reverted to free circulation;
- (d) the goods are –
  - (i) abandoned to the Commissioner;<sup>107</sup> or
  - (ii) destroyed under supervision of the customs authority or an organ of state designated by the customs authority;
- (e) the goods are seized or confiscated in terms of this Act, a tax levying Act, any other legislation or an order of court; or
- (f) the goods are damaged, destroyed, lost or unaccounted for and the clearance declaration for the goods is withdrawn in terms of Chapter **24**.

#### **Clearance and release of goods under customs procedures**

**125.** (1) Goods under a customs procedure may at any time during, or at the completion of, the procedure be cleared for another customs procedure or for home use, as may be permissible in the circumstances.<sup>108</sup>

<sup>105</sup> For instance, the Customs Tariff prescribes conditions and requirements for certain customs procedures.

<sup>106</sup> The time when goods come under a customs procedure and when a customs procedure ends is stated in the Chapter dealing with the specific customs procedure.

<sup>107</sup> See Chapter **25**.

<sup>108</sup> If the goods are only partially cleared for another customs procedure or for home use, the existing clearance declaration must be amended in terms of section **174(2)** to apply to that part of the goods that remain under the existing procedure.

(2) Goods that are cleared in terms of subsection (1) for another customs procedure or for home use acquire a tax status applicable to goods cleared for that customs procedure or for home use, as the case may be.<sup>109</sup>

### **Transfer of ownership of goods under customs procedures**

**126.** (1) Ownership of goods under a customs procedure may not without the approval of the customs authority be transferred to another person whilst those goods are under that procedure.

(2) An agreement entered into in contravention of subsection (1) is null and void.

(3) Application for approval in terms of subsection (1) must be made to the customs authority –

- (a) before the goods are transferred; and
- (b) on a form as may be prescribed by rule and contain the information required on the prescribed form.

(4) The customs authority may not without good reason withhold approval in terms of subsection (1).

(5) If ownership of goods under a customs procedure is transferred with the approval of the customs authority in accordance with subsection (1) –

- (a) the transfer does not –
  - (i) interrupt the continuation of that procedure; or
  - (ii) affect the tax status conferred on the goods by virtue of that procedure; and
- (b) the new owner of the goods or, if only a share in the ownership of the goods has been transferred, the person to whom that share has been transferred –
  - (i) must be regarded to have cleared the goods or that share for that procedure;
  - (ii) assumes the obligations of the previous owner or holder of that share;
  - (iii) must comply with any requirements and conditions applicable to the goods in terms of that procedure; and
  - (iv) must comply with any conditions imposed by the customs authority in respect of the transfer.

(6) Subsection (5) does not affect the liability of the previous owner or holder of the transferred share of the goods for any import or export tax, penalties or other money

<sup>109</sup> For tax status of goods cleared for home use or a customs procedure, see Chapter 6.

owed to the Commissioner on the goods up to the time of transfer of ownership or of the share in ownership.

### **Tax consequences for imported goods under customs procedures in event of non-compliance**

**127.** (1) Imported goods under a customs procedure must for tax purposes be regarded to be cleared for home use under Chapter 8 –<sup>110</sup>

- (a) if the goods are diverted for home use;
- (b) if the goods whilst under that procedure are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter 24 –
  - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section 533(1), 534(1), 535(1) or 536(1); and
  - (ii) in the case of lost goods, that the goods, after having been lost, have not gone into home use;
- (c) in any other circumstances specifically provided for in this Act.

(2) The customs authority may direct that imported goods under a customs procedure must for tax purposes be regarded to be cleared for home use under Chapter 8 –

- (a) if a provision of this Act or a tax levying Act applicable to customs procedures generally or to that specific customs procedure is breached in respect of those goods; or
- (b) if a condition of the license of any premises used for the purpose of carrying out that customs procedure is breached in respect of those goods.

(3) When applying subsection (1) or (2) to imported goods under a customs procedure in circumstances where the ground for regarding the imported goods to be cleared for home use under Chapter 8 pertains only to a part of those imported goods, only that part of the imported goods must in terms of that subsection be regarded to be cleared for home use.<sup>111</sup>

### **Tax consequences for free circulation goods under customs procedures in event of non-compliance**

**128.** (1) Goods under a customs procedure that were in free circulation when the goods came under that procedure must for tax purposes be regarded to have reverted to free circulation –<sup>112</sup>

<sup>110</sup> For tax implications if goods are regarded to be cleared for home use under Chapter 8, see section 153.

<sup>111</sup> For the equivalent provision in relation to compensating products obtained from imported goods under inward processing, see section 417(1).

<sup>112</sup> For tax implications if goods are regarded as having reverted to free circulation, see section 160.

- (a) if the goods are diverted for home use;
- (b) if the goods whilst under that procedure are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter 24 –
  - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section 533(1), 534(1), 535(1) or 536(1); and
  - (ii) in the case of lost goods, that the goods, after having been lost, have not gone into home use; or
- (c) in any other circumstances specifically provided for in this Act.

(2) The customs authority may direct that goods under a customs procedure that were in free circulation when the goods came under that procedure must for tax purposes be regarded to have reverted to free circulation –

- (a) if a provision of this Act or a tax levying Act applicable to customs procedures generally or to that specific customs procedure is breached in respect of those goods; or
- (b) if a condition of the license of any premises used for the purpose of carrying out that customs procedure is breached in respect of those goods.

(3) When applying subsection (1) or (2) to goods under a customs procedure in circumstances where the ground for regarding the goods to have reverted to free circulation pertains only to a part of those goods, only that part of the goods must in terms of that subsection be regarded to have reverted to free circulation.

### **Tax consequences for goods exported under customs procedures in event of non-compliance**

**129.** (1) The customs authority may direct that goods exported under a customs procedure must for tax purposes be regarded to be cleared for outright export<sup>113</sup> if a provision of this Act or a tax levying Act applicable to customs procedures generally or to that specific customs procedure is breached in respect of those goods.

(2) When applying subsection (1) to goods exported under a customs procedure in circumstances where the ground for regarding the exported goods to be cleared for outright export pertains only to a part of those exported goods, only that part of the exported goods must in terms of that subsection be regarded to be cleared for outright export.<sup>114</sup>

<sup>113</sup> For tax implications if goods are regarded to be cleared for outright export, see section 158.

<sup>114</sup> For the equivalent provision in relation to compensating products obtained from goods exported under outward processing procedure, see section 459(2).

**Other consequences of non-compliance with provisions applicable to customs procedures**

**130.** Section **127**, **128** or **129** applies apart from any criminal proceedings that may be instituted, administrative penalty that may be imposed or any other step that may be taken by the customs authority in terms of this Act for a breach of a provision applicable to customs procedures generally or to the relevant customs procedure, which may include, where not inconsistent with this Act or other applicable legislation or otherwise inappropriate –

- (a) withdrawing the release of the goods for the relevant customs procedure in terms of section **120**;
- (b) demanding that the goods immediately be cleared for home use under Chapter **8**, in the case of imported goods;
- (c) applying section **559(2)** to the goods;
- (d) seizing the goods in terms of Chapter **33**;
- (e) allowing the person who cleared the goods to abandon the goods to the Commissioner in accordance with Chapter **25**; or
- (f) allowing or directing the person who cleared the goods –
  - (i) to continue applying the relevant customs procedure to the goods but subject to such conditions as the customs authority may determine;
  - (ii) to remove the goods from the Republic, in the case of imported goods; or
  - (iii) to destroy the goods under supervision of the customs authority or an organ of state designated by the customs authority.

***Part 4: General principles governing transport and loading of goods***

**Transport of goods not in free circulation**

**131.** (1) Goods not in free circulation may be transported in or through the Republic only –

- (a) under a customs procedure that allows the transport of goods under that procedure; and
- (b) in accordance with the provisions regulating that procedure.

(2) The following categories of goods not in free circulation are excluded from subsection (1):

- (a) Goods transported on board a foreign-going vessel or aircraft from –
  - (i) the place where the vessel or aircraft entered the Republic to the customs seaport or airport where the goods are off-loaded;
  - (ii) the place where the vessel or aircraft entered the Republic to the place where the vessel or aircraft leaves the Republic, if the goods are not off-loaded in the Republic; or

- (iii) the customs seaport or airport where the goods were loaded on board that vessel or aircraft for export from the Republic to the place where the vessel or aircraft leaves the Republic;
- (b) goods transported on board a cross-border railway carriage from –
  - (i) the place of entry where the railway carriage entered the Republic to the rail cargo terminal where the goods are off-loaded;
  - (ii) the rail cargo terminal where the goods were loaded on board that railway carriage for export from the Republic to the place of exit where the railway carriage leaves the Republic; or
  - (iii) the place of entry where the railway carriage entered the Republic to the place of exit where the railway carriage leaves the Republic, if the goods were not off-loaded in the Republic;
- (c) goods transported between terminals and depots served by the same Customs Office; or
- (d) goods transported in accordance with a direction issued or permission granted<sup>115</sup> by the customs authority in terms of a provision of this Act or a tax levying Act.

(3) Subsection (2) may not be read as affecting the cargo reporting requirements contained in Chapters 3 and 4.

### **Loading of goods on foreign-going vessels and aircraft and cross-border railway carriages for export<sup>116</sup>**

**132.** (1) No goods destined for export from the Republic may be loaded on board a foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported unless the goods are cleared and released for –

- (a) export in terms of the export procedure; or
- (b) a customs procedure that allows the export of goods under that procedure without any separate export clearance.<sup>117</sup>

(2) Goods cleared and released for export in terms of the export procedure or for a customs procedure that allows the export of goods under that procedure without any separate export clearance, may, once loaded on board a foreign-going vessel or aircraft, cross-border railway carriage or truck in which the goods are to be exported from the

<sup>115</sup> For issuing directions and permissions subject to conditions, see section 883.

<sup>116</sup> Section 39 applies to vehicles and goods on board vehicles passing through land border-posts out of the Republic.

<sup>117</sup> The following customs procedures allow the export of goods under that procedure without separate export clearance:

- (a) the international transit procedure in terms of Chapter 9;
- (b) the transshipment procedure in terms of Chapter 10;
- (c) the tax free shop procedure in terms of Chapter 13; or
- (d) the stores procedure in terms of Chapter 14.



Republic, not be off-loaded in the Republic except with the permission of the customs authority.

- (3) Subsections (1) and (2) do not apply to –
- (a) goods falling within a category of goods excluded in terms of section **110** from export clearance requirements;
  - (b) any category of goods excluded from subsection (1) by rule; or
  - (c) goods exempted from subsection (1) by the customs authority in a specific case.

### **Seals and sealing of vehicles, containers and packages**

**132A.** (1) A container, the holding compartment of a vehicle capable of being closed, a road tanker and any package as may be specified by rule, which contains goods not in free circulation, must have such security seals affixed thereto or be otherwise secured by such fastenings and in such a manner and in compliance with such standards or other specifications, as may be prescribed by rule.

(2) Such seals or fastenings must be supplied and affixed by and at the risk and expense of a person as may be prescribed by rule.

## ***Part 5: Other matters***

### **Keeping of records**

**132B.** (1) A person carrying on a business in the Republic as may be specified by rule must for purposes of this Act keep such records relating to that business and transactions relating that business, as may be prescribed by rule.

(2) A person referred to in subsection (1) must on request by a customs officer produce, in a manner prescribed by rule, any records referred to in subsection (1) which the customs officer may require for enforcing this Act.

### **Rules to facilitate implementation of this Chapter**

**133.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) any general conditions applicable to an exclusion referred to in section **106** or **110**, the circumstances in which any such exclusion applicable to specific goods or goods imported or to be exported by a specific person may be withdrawn and procedures for the withdrawal of any such exclusion or exemption;
- (b) the circumstances and the manner in which clearance substitutions may be effected in terms of section **112**, **122** or **125**;

- (c) measures aimed at ensuring the expeditious customs processing of clearance declarations;
- (d) notification procedures when the release of goods for home use or a customs procedure has been refused or withdrawn;
- (e) documents and other methods to prove that goods fall within an excluded category listed in section **106** or **110**;
- (f) documents on authority of which goods that fall within an excluded category listed in section **106** or **110** may be claimed and removed;
- (g) regarding the keeping and affixing of seals and recording of seal numbers; and
- (h) specifying records to be kept of the inspection of seals or fastenings, and the circumstances in which, and the requirements that must be met when seals or fastenings are replaced.

### **Offences in terms of this Chapter**

**134.** (1) An importer of goods to which section **104** applies, or, if the importer is not located in the Republic, the importer's agent in the Republic, is guilty of an offence if –

- (a) no clearance declaration to clear the goods for home use or a customs procedure in compliance with that section is submitted to the customs authority; or
- (b) a clearance declaration is submitted but not within the timeframes or at the time required by section **105**.

(2) An exporter of goods to which section **108** applies, or, if the exporter is not located in the Republic, the exporter's agent in the Republic, is guilty of an offence if –

- (a) no clearance declaration to clear the goods for export in compliance with that section is submitted to the customs authority; or
- (b) a clearance declaration is submitted but not within the timeframes or at the time required by section **109**.

(3) A person is guilty of an offence if that person contravenes section **131**(1) or **132**(1) or (2).

(4) The offences referred to in subsection (1)(a) and (2)(a) are Category 1 offences.

## **CHAPTER 6**

### **TAX STATUS OF GOODS**

#### **Purpose and application of this Chapter**

**135.** (1) The purpose of this Chapter is to confer for purposes of any applicable tax levying Act a tax status on goods –

- (a) when the goods –
  - (i) are cleared for home use; or
  - (ii) are cleared for a customs procedure or otherwise come under a customs procedure;
- (b) whilst the goods are under a customs procedure; or
- (c) if the goods are regarded to be cleared for home use or outright export.

(2) (a) A tax status conferred on goods in terms of this Chapter applies only to the extent not provided otherwise in a tax levying Act regulating any relevant tax on those goods.

(b) In the event of any inconsistency between this Chapter and a provision of a tax levying Act, the provision of the tax levying Act prevails.

### **Legal effect of tax status**

**136.** (1) A tax due status conferred in terms of this Chapter on goods in relation to import or export tax indicates that import or export tax –

- (a) is payable on the goods if the goods are of a type or kind on which import or export tax has been imposed in terms of a tax levying Act; or
- (b) will become payable on the goods if import or export tax is imposed in terms of a tax levying Act on goods of that type or kind.

(2) A tax free status conferred in terms of this Chapter on goods in relation to import tax, export tax or domestic tax indicates that whilst the goods have a tax free status no import, export or domestic tax –

- (a) that have been imposed in terms of a tax levying Act on goods of that type or kind is payable on the goods; or
- (b) that may be imposed in terms of a tax levying Act on goods of that type or kind will be payable on the goods.

(3) A tax refundable status conferred in terms of this Chapter on goods in relation to domestic tax<sup>118</sup> indicates that domestic tax paid on the goods may be refundable subject to and in accordance with the applicable tax levying Act.

### ***Part 1: Goods formally cleared***

#### **Tax status of goods cleared for home use under Chapter 8<sup>119</sup>**

<sup>118</sup> For instance tax such as VAT and excise duty paid on goods whilst in free circulation.

**137.** (1) Goods imported into the Republic acquire a tax due status in relation to import tax to the extent as may be stated in a tax levying Act if, and from the date, the goods are cleared for home use under Chapter 8.<sup>120</sup>

(2) Any import tax on imported goods that acquire a tax due status in terms of subsection (1) becomes payable at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.

#### **Tax status of goods in free circulation cleared for outright export**

**138.** (1) Goods in free circulation destined for export from the Republic acquire a tax due status in relation to export tax and a tax refundable status in relation to domestic tax paid on the goods if, and from the date, the goods are cleared for outright export.<sup>121</sup>

(2) Any export tax on goods that acquire a tax due status in terms of subsection (1) becomes payable at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.

(3) Any domestic tax paid on goods before the goods acquired a tax free status in terms of subsection (1) may be recovered from the Commissioner subject to the applicable tax levying Act.

#### **Tax status of goods under national transit procedure**

**139.** The national transit procedure confers a tax free status in relation to import tax on goods under that procedure, and no import tax is payable on goods when cleared for and whilst under that procedure.

#### **Tax status of goods under international transit procedure**

**140.** The international transit procedure confers a tax free status in relation to import tax and export tax on goods under that procedure, and –

- (a) no import tax is payable on goods when cleared for and whilst under that procedure;
- and
- (b) no export tax is payable on goods when exported under that procedure.

#### **Tax status of goods under transshipment procedure**

<sup>119</sup> This section only applies to goods cleared for home use under Chapter 8. Goods cleared for home use under a customs procedure, such as re-imported unaltered goods under the temporary export procedure, have a tax status applicable to the relevant customs procedure. See section 187(2).

<sup>120</sup> See section 173 for time when goods are cleared.

<sup>121</sup> See section 173 for time when goods are cleared.

**141.** The transshipment procedure confers a tax free status in relation to import tax and export tax on goods under that procedure, and –

- (a) no import tax is payable on goods when cleared for and whilst under that procedure; and
- (b) no export tax is payable on goods when exported under that procedure.

**Tax status of goods under temporary admission procedure**

**142.** The temporary admission procedure confers a tax free status in relation to import tax and export tax on goods under that procedure, and –

- (a) no import tax is payable on goods –
  - (i) when cleared for and whilst under that procedure; or
  - (ii) which automatically come under that procedure when entering the Republic; and
- (b) no export tax is payable on goods referred to in –
  - (i) paragraph (a)(i) when cleared and released for export under the outbound leg of that procedure; or
  - (ii) paragraph (a)(ii) when those goods leave the Republic under the outbound leg of that procedure.

**Tax status of goods under warehousing procedure**

**143.** The warehousing procedure confers a tax free status in relation to import tax on goods under that procedure, and no import tax is payable on goods when cleared for and whilst under that procedure.

**Tax status of goods under tax free shop procedure**

**144.** The tax free shop procedure confers a tax free status in relation to import tax, export tax and domestic tax and a tax refundable status in relation to domestic tax on goods under that procedure, and –

- (a) no import tax is payable on imported goods when cleared for and whilst under that procedure;
- (b) no domestic tax is payable on goods referred to in paragraph (a) or that were in free circulation before they came under that procedure, when those goods are sold whilst under and in accordance with that procedure;
- (c) no export tax is payable on goods referred to in paragraph (b) when exported under that procedure; and
- (d) any domestic tax paid on goods that were in free circulation before they came under that procedure may be recovered from the Commissioner.<sup>122</sup>

<sup>122</sup> Goods in free circulation can be supplied to a tax free shop without any clearance and release requirements,

### **Tax status of goods under stores procedure**

**145.** The stores procedure confers a tax free status in relation to import tax, domestic tax and export tax on goods under that procedure, and except where provided otherwise in this Act<sup>123</sup> –

- (a) no import tax is payable on imported goods when cleared for and whilst under that procedure;
- (b) no export tax is payable on goods exported under that procedure; and
- (c) any domestic tax paid on goods that were in free circulation before they came under that procedure may be recovered from the Commissioner.

### **Tax status of goods under temporary export procedure**

**146.** (1) The temporary export procedure confers a tax free status in relation to export tax and import tax on goods under that procedure, and –

- (a) no export tax is payable on such goods –
  - (i) when cleared for and whilst under that procedure; or
  - (ii) which automatically come under that procedure when the goods leave the Republic;
- (b) no import tax is payable on goods referred to in –
  - (i) paragraph (a)(i) when those goods are cleared and released under the inbound leg of that procedure as re-imported unaltered goods for home use, subject to subsection (2); or
  - (ii) paragraph (a)(ii) when those goods return to the Republic under the inbound leg of that procedure;<sup>124</sup> and
- (c) any export tax paid on exported goods cleared for outright export may be recovered from the Commissioner if those goods are returned to the Republic and cleared and released under the temporary export procedure as re-imported unaltered goods for home use.

(2) Subsection (1)(b) does not affect liability for unpaid import tax on imported goods exported under the temporary export procedure. When such goods are returned to the Republic on the inbound leg of that procedure, any unpaid import tax on the initial import of the goods becomes payable when the goods are cleared as unaltered goods for home use.

### **Tax status of goods under inward processing procedure**

but once supplied come under the tax free shop procedure and acquire a tax free status.

<sup>123</sup> See for instance section 334.

<sup>124</sup> This can only apply to means of transport and reusable transport equipment in free circulation before leaving the Republic on the outbound leg of the procedure. See Part 5 of Chapter 16.

**147.** (1) (a) Imported goods acquire a tax due status in relation to import tax to the extent as may be stated in a tax levying Act if, and from the date, the goods are cleared for the inward processing procedure.<sup>125</sup>

(b) Any import tax on imported goods that acquire a tax due status in terms of subsection (1) becomes payable at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.

(2) Compensating products obtained from the processing of goods under the inward processing procedure have a tax free status in relation to export tax, and no export tax is payable on such products when cleared and released for export under the inward processing procedure as inward processed compensating products.

#### **Tax status of goods under home use processing procedure**

**148.** (1) (a) Imported goods acquire a tax due status in relation to import tax to the extent as may be stated in a tax levying Act if, and from the date, the goods are cleared for the home use processing procedure.<sup>126</sup>

(b) Any import tax on imported goods that acquire a tax due status in terms of subsection (1) becomes payable at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.

(2) Compensating products obtained from the processing of goods under home use processing are goods in free circulation and as such have no tax free status in relation to domestic tax and export tax.

#### **Tax status of goods under outward processing procedure**

**149.** (1) (a) Goods in free circulation acquire a tax due status in relation to export tax to the extent as may be stated in a tax levying Act if, and from the date, the goods are cleared for the outward processing procedure.<sup>127</sup>

(b) Any export tax on goods in free circulation that are cleared for outward processing becomes payable at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.

(2) Compensating products obtained from the processing of goods under the outward processing procedure have a tax due status in relation to import tax to the extent as may be stated in a tax levying Act if, and from the date, the goods are cleared for home use under the outward processing procedure as outward processed compensating products.<sup>128</sup>

<sup>125</sup> See section **173** for time when goods are cleared.

<sup>126</sup> See section **173** for time when goods are cleared.

<sup>127</sup> See section **173** for time when goods are cleared.

(b) Any import tax on imported goods that are cleared for home use under the outward processing procedure as outward processed compensating products becomes payable at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.

### **Duration of tax status conferred by customs procedures**

**150.** (1) The tax status conferred on goods by a customs procedure applies for as long as the goods are under that customs procedure.

(2) When goods under a specific customs procedure are –

- (a) cleared and released for another customs procedure, the goods acquire a tax status applicable to that other customs procedure; or
- (b) cleared for home use under Chapter 8, the goods acquire a tax status applicable to home use under that Chapter.

### ***Part 2: Goods regarded to be cleared for home use***

#### **Tax status of goods imported or off-loaded otherwise than through or at places of entry**

**151.** (1) If goods imported into the Republic, including any foreign-going vessel or aircraft, cross-border train or railway carriage or vehicle entering the Republic, are in terms of section 44 regarded for tax purposes to be cleared for home use under Chapter 8, those goods acquire a tax due status in relation to import tax as from –

- (a) the date of import; or
- (b) a date determined by the customs authority if the date of import for any reason cannot be determined.

(2) Any import tax<sup>129</sup> that would have been payable on the goods referred to in subsection (1) had the goods actually been cleared for home use under Chapter 8 on the date applied to the goods in terms of that subsection, becomes payable in respect of those goods at such rate,<sup>130</sup> at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.<sup>131</sup>

#### **Tax status of non-cleared imported goods**

<sup>128</sup> See section 173 for time when goods are cleared.

<sup>129</sup> See for instance section 84 of the Customs Duty Act for assessment of duties on goods regarded to be cleared for home use.

<sup>130</sup> See for instance sections 80(1)(b) and 81 of the Customs Duty Act.

<sup>131</sup> See for instance section 27 of the Customs Duty Act for persons liable for duties on goods in these circumstances.



**152.** (1) If goods imported into the Republic are in terms of section **107(1)** regarded for tax purposes to be cleared for home use under Chapter **8**, those goods acquire a tax due status in relation to import tax as from –

- (a) the date on which the applicable period for submission of a clearance declaration in respect of the goods expired in terms of section **105(1)** or (3) or on which the clearance declaration had to be submitted in terms of that section; or
- (b) a date determined by the customs authority if the date referred to in paragraph (a) for any reason cannot be determined.

(2) Any import tax<sup>132</sup> that would have been payable on the goods referred to in subsection (1) had the goods actually been cleared for home use under Chapter **8** on the date applied to the goods in terms of that subsection, becomes payable in respect of those goods at such rate,<sup>133</sup> at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.<sup>134</sup>

#### **Tax status of goods under customs procedures regarded to be cleared for home use**

**153.** (1) If goods under a customs procedure are in terms of section **127** regarded for tax purposes to be cleared for home use under Chapter **8** those goods lose the tax status they had under that customs procedure and acquire a tax due status in relation to import tax as from the date on which those goods were cleared for, or otherwise came under, that customs procedure.

(2) Any import tax<sup>135</sup> that would have been payable on the goods referred to in subsection (1) had the goods actually been cleared for home use under Chapter **8** on the date referred to in that subsection, becomes payable in respect of those goods at such rate,<sup>136</sup> at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.<sup>137</sup>

#### **Tax status of samples drawn from imported goods**

**154.** (1) Samples drawn from imported goods to which section **104** applies and which are in terms of section **501** regarded for tax purposes to be cleared for home use under Chapter **8**, acquire a tax due status in relation to import tax –

<sup>132</sup> See for instance section **84** of the Customs Duty Act for assessment of duties on goods regarded to be cleared for home use.

<sup>133</sup> See for instance sections **80(1)(b)** and **81** of the Customs Duty Act.

<sup>134</sup> See for instance section **28** of the Customs Duty Act for persons liable for duties on goods in these circumstances.

<sup>135</sup> See for instance section **84** of the Customs Duty Act for assessment of duties on goods regarded to be cleared for home use.

<sup>136</sup> See for instance sections **80(1)(b)** and **81** of the Customs Duty Act.

<sup>137</sup> See for instance sections **29** and **30** of the Customs Duty Act for persons liable for duties on goods in these circumstances.

- (a) in the case of samples drawn before the goods are cleared for home use or a customs procedure, as from the date of import of the goods or, if the date of import for any reason cannot be determined, a date determined by the customs authority; or
- (b) in the case of samples drawn from goods under a customs procedure, as from the date on which those goods were cleared for, or otherwise came under, that customs procedure.

(2) Any import tax that would have been payable on samples drawn from goods referred to in subsection (1) had the samples actually been cleared for home use under Chapter 8 on the date referred to in that subsection, must be paid –

- (a) on demand; and
- (b) by the person who took the samples.

**Goods regarded for tax purposes to be cleared for home use not to be treated as goods cleared for home use**

**155.** (1) If any goods are in terms of a provision of this Act regarded for tax purposes to be cleared for home use under Chapter 8, the goods may not be dealt with or released as if the goods were actually cleared for home use, but the customs authority may allow or direct the importer of the goods to formally clear the goods for home use within a period determined by the customs authority.

(2) The customs authority may not in terms of subsection (1) allow or direct goods to be cleared for home use where such clearance will be inconsistent with this Act<sup>138</sup> or other applicable legislation.<sup>139</sup>

***Part 3: Goods regarded to be cleared for outright export***

**Tax status of goods exported or loaded for export otherwise than through or at places of exit**

**156.** (1) If goods in the process of being exported, or exported, from the Republic, including any foreign-going vessel or aircraft, cross-border train or railway carriage or vehicle leaving or which has left the Republic, are in terms of section 44 regarded for tax purposes to be cleared for outright export, those goods acquire a tax due status in relation to export tax as from –

- (a) a date five calendar days before the date of export of the goods, if the goods have been exported; or
- (b) a date determined by the customs authority –

<sup>138</sup> For instance where the goods have been seized or abandoned to the Commissioner or where section 559(1) or (2) is applied to the goods.

<sup>139</sup> For instance legislation applicable to prohibited, restricted or sectorally controlled goods.

- (i) if the date referred to in paragraph (a) for any reason cannot be determined;  
or
- (ii) if the goods are still in the process of being exported.

(2) Any export tax<sup>140</sup> that would have been payable on the goods referred to in subsection (1) had the goods actually been cleared for outright export on the date applied to the goods in terms of that subsection, becomes payable in respect of those goods at such rate,<sup>141</sup> at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.<sup>142</sup>

### **Tax status of goods exported without clearance**

**157.** (1) If goods exported or in the process of being exported from the Republic are in terms of section **111**(1) regarded for tax purposes to be cleared for outright export, those goods acquire a tax due status in relation to export tax as from a date determined by the customs authority.

(2) Any export tax<sup>143</sup> that would have been payable on the goods referred to in subsection (1) had the goods actually been cleared for outright export on the date applied to the goods in terms of that subsection, becomes payable in respect of those goods at such rate,<sup>144</sup> at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.<sup>145</sup>

### **Tax status of goods under customs procedures regarded to be cleared for outright export**

**158.** (1) If goods were or are being exported from the Republic under a customs procedure other than outright export and those goods are in terms of section **129** regarded for tax purposes to be cleared for outright export, those goods lose the tax status they had under that customs procedure in relation to export tax and acquire a tax due status in relation to export tax as from the date on which those goods came under that customs procedure.<sup>146</sup>

<sup>140</sup> See for instance section **84** of the Customs Duty Act for assessment of duties on goods regarded to be cleared for outright export.

<sup>141</sup> See for instance sections **80**(2)(b) and **81** of the Customs Duty Act.

<sup>142</sup> See for instance section **32** of the Customs Duty Act for persons liable for duties on goods in these circumstances.

<sup>143</sup> See for instance section **84** of the Customs Duty Act for assessment of duties on goods regarded to be cleared for outright export.

<sup>144</sup> See for instance sections **80**(2)(b) and **81** of the Customs Duty Act.

<sup>145</sup> See for instance section **33** of the Customs Duty Act for persons liable for duties on goods in these circumstances.

<sup>146</sup> If goods exported under a customs procedure are regarded to be cleared for outright export, only export tax is affected and the goods retain their tax refundable status in relation to domestic tax paid on the goods. In other words, if VAT paid on the goods was refunded because of the export of the goods, the refund is not affected by the fact that the goods were regarded to be cleared for outright export.

(2) Any export tax that would have been payable on the goods referred to in subsection (1) had the goods actually been cleared for outright export on the date referred to in that subsection, becomes payable in respect of those goods at such rate,<sup>147</sup> at such time and by such person or persons as may be determined in terms of the applicable tax levying Act.<sup>148</sup>

### **Goods regarded for tax purposes to be cleared for outright export not to be treated as goods cleared for outright export**

**159.** (1) If any goods are in terms of a provision of this Act regarded for tax purposes to be cleared for outright export, the goods may not be dealt with or released as if the goods were actually cleared for outright export, but the customs authority may allow or direct the exporter of the goods to formally clear goods for outright export within a period determined by the customs authority.

(2) The customs authority may not in terms of subsection (1) allow or direct goods to be cleared for outright export where such clearance will be inconsistent with this Act<sup>149</sup> or other applicable legislation.<sup>150</sup>

(3) If goods in free circulation are in terms of a provision of this Act regarded for tax purposes to be cleared for outright export, no domestic tax paid on such goods that would have been refundable in terms of a tax levying Act regulating that tax had the goods actually been cleared for outright export is recoverable from the Commissioner.<sup>151</sup>

### **Tax status of goods under customs procedures that revert to free circulation**

**160.** (1) If goods under a customs procedure revert in terms of section **502**, or are in terms of section **128** regarded to have reverted, to free circulation –

- (a) those goods lose any tax refundable status in relation to domestic tax they had under that customs procedure as from the date on which those goods came under that customs procedure;
- (b) those goods no longer qualify for a refund of any domestic tax paid on the goods that arose from their tax refundable status; and

<sup>147</sup> See for instance sections **80(2)(b)** and **81** of the Customs Duty Act.

<sup>148</sup> See for instance section **33** of the Customs Duty Act for persons liable for duties on goods in these circumstances.

<sup>149</sup> For instance where the goods have been seized or abandoned to the Commissioner or where section **559(1)** or (2) is applied to the goods.

<sup>150</sup> For instance legislation applicable to prohibited, restricted or sectorally controlled goods.

<sup>151</sup> This provision affects tax such as VAT and excise duty paid on goods in free circulation that would have been refundable upon actual clearance of the goods for outright export.

(c) the person who received any refund in respect of the goods because of the tax refundable status of the goods must in accordance with any applicable tax levying Act

–

- (i) pay the refund back to the Commissioner; and
- (ii) pay to the Commissioner any interest on the amount of that refund from the date on which the refund was paid to that person.

(2) Any recovery of a refund and any interest that become due in terms of subsection (1) is payable on demand.

#### ***Part 4: Other matters***

##### **Rules to facilitate implementation of this Chapter**

**161.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) .....

### **CHAPTER 7**

#### **STANDARD PROCESSES AND REQUIREMENTS FOR CLEARANCE AND RELEASE OF GOODS<sup>152</sup>**

##### **Purpose and application of this Chapter**

**162.** (1) The purpose of this Chapter is to determine standard processes and requirements applying generally to the clearance and release of goods for home use and the customs procedures.

(2) This Chapter applies to –

- (a) all imported goods that must in terms of this Act be cleared for home use or a customs procedure; and
- (b) all goods destined for export from the Republic that must in terms of this Act be cleared for export.

(3) This Chapter applies subject to another provision of this Act applicable to the clearance or release of goods specifically for home use or specifically for a particular customs procedure, and in the event of any inconsistency between a provision of this Chapter and such other provision of this Act that other provision prevails.

<sup>152</sup> This Chapter sets standard processes and requirements applying generally to the clearance and release of all goods imported into or destined for export from the Republic, mainly to avoid repeating the same requirements for the different customs procedures in the Chapters dealing with the specific procedures. The standard procedures provide the default position and apply unless the Chapters dealing with the specific procedures provide otherwise.

***Part 1: Standard clearance processes and requirements***

**Submission of clearance declarations**

**163.** In order to clear goods for home use or a customs procedure, a clearance declaration in respect of those goods stating the purpose of the clearance and the other information required in connection with those goods in terms of this Act and any applicable tax levying Act must be submitted to the customs authority.

**Types of clearance declarations**

**164.** (1) A clearance declaration must either be –

- (a) a regular clearance declaration;
- (b) an incomplete clearance declaration;
- (c) a provisional clearance declaration;
- (d) a supplementary clearance declaration;
- (e) a simplified clearance declaration; or
- (f) another document that may in specific circumstances set out in this Act be used as a clearance declaration.

(2) A regular clearance declaration must be submitted except in circumstances where another type of clearance declaration is specifically allowed in terms of this Act.

(3) A document referred to in subsection (1)(f) must, as may be appropriate, for the purposes of this Act and a tax levying Act, be regarded to be a clearance declaration.

**Persons by whom clearance declarations may be submitted**

**165.** (1) A clearance declaration to clear goods for home use or a customs procedure may be submitted only by –

- (a) a person who in terms of a provision of this Act is entitled to submit clearance declarations for home use or that customs procedure;<sup>153</sup> or
- (b) a licensed customs broker duly authorised to submit a clearance declaration on behalf of a person referred to in paragraph (a).

(2) A person referred to in subsection (1)(a) may submit a clearance declaration only if that person is a registered person or a licensee.

<sup>153</sup> The registered persons and licensees entitled to submit clearance declarations for home use or a specific customs procedure are specified in the Chapter on home use or that specific customs procedure.

(3) If a clearance declaration is submitted by a customs broker on behalf of a person referred to in subsection (1)(a) the customs broker must, on request by the customs authority, submit a certified copy of the authority in terms of which that customs broker submits the clearance declaration on behalf of that person.

### **Persons by whom goods are cleared**

**166.** (1) A person who submits a clearance declaration in terms of section **165** to clear goods for home use or a customs procedure must for purposes of this Act and a tax levying Act be regarded to be the person clearing the goods, except where provided otherwise in this Act or a tax levying Act.

(2) If a clearance declaration is submitted by a customs broker on behalf of a person referred to in section **165(1)(a)**, that person and not the customs broker must for purposes of this Act and a tax levying Act be regarded to be the person clearing the goods.<sup>154</sup>

### **Contents of clearance declarations**

**167.** (1) A regular clearance declaration must state –

- (a) the nature and quantity of the goods, and, in the case of goods imported into or destined for export from the Republic by sea, the cargo status of the goods;
- (b) the UCR number of the goods;
- (c) the date and time of actual or expected arrival of the goods, as may be applicable, at a place referred to in –
  - (i) section **105**, in the case of imported goods; or
  - (ii) section **109**, in the case of goods to be exported from the Republic;
- (d) the tariff classification ascribed to the goods in terms of section **98** of the Customs Duty Act, and the reference number of any direction referred to in section **105(2)** of that Act or advance tariff ruling in terms of that Act that may be applicable to the goods;
- (e) the customs value ascribed to the goods in terms of section **116** of the Customs Duty Act, and the reference number of any direction referred to in section **123(2)** of that Act or advance ruling on a valuation criterion in terms of that Act that may be applicable to the goods;
- (f) the origin ascribed to the goods in terms of section **153** of the Customs Duty Act, and the reference number of any direction referred to in section **159(2)** of that Act or advance origin ruling in terms of that Act that may be applicable to the goods;

<sup>154</sup> See also section **201(2)**.

- (g) whether any import or export tax is payable on the goods in terms of any tax levying Act, and if so –
  - (i) the kind of tax payable; and
  - (ii) the amount of the tax determined in accordance with a self-assessment in terms of the applicable tax levying Act;
- (h) the customs code and the name and physical address of the person submitting the declaration, or, if submitted by a customs broker acting in terms of section 165(1)(b) –
  - (i) the customs code of the customs broker; and
  - (ii) the customs code and the name and physical address of the principal on whose behalf the declaration is submitted;
- (i) in the case of goods under a customs procedure that are to be cleared for home use or another customs procedure, the reference number of the clearance declaration submitted for clearing the goods for that customs procedure; and
- (j) such additional information as may be required on the prescribed form or by this Act or a tax levying Act.

(2) Any other type of clearance declaration must contain the information listed in subsection (1) except –

- (a) as provided otherwise in this Act; or
- (b) to the extent exempted by rule.

(3) A clearance declaration must be on a form and in a format as may be prescribed by rule,<sup>155</sup> except where determined otherwise in terms of this Act for any specific type of clearance declaration.

### **How and where to submit clearance declarations**

**168.** (1) A clearance declaration must be submitted to the customs authority electronically in accordance with section 879 unless the person submitting the declaration falls within a category of persons authorised by rule to submit documents manually in paper format.

- (2) A clearance declaration submitted in paper format must –
  - (a) be completed, signed and certified by the person who submits the clearance declaration;
  - (b) consist of the signed original and a number of copies as may be prescribed by rule; and
  - (c) be submitted to the customs authority –

<sup>155</sup> See section 873.



- (i) at the Customs Office serving the customs controlled area where the goods are to be released for home use or a customs procedure; or
- (ii) at any other Customs Office designated in terms of section **14** to receive clearance declarations.

#### **Time of day when clearance declarations may be submitted**

**169.** A clearance declaration –

- (a) transmitted electronically, may be transmitted at any time; or
- (b) submitted in paper format may be submitted to the customs authority at the Customs Office referred to in section **168(2)(c)** only during that Office's hours of business.

#### **Submission of clearance declarations before arrival of goods at place of entry**

**170.** (1) A clearance declaration in relation to goods imported or to be imported into the Republic may be submitted to the customs authority before the arrival of the goods at the place referred to in section **105**, provided that the goods have already been loaded on board the vessel, aircraft, railway carriage or vehicle transporting those goods to the Republic.

(2) If a clearance declaration is received before the goods arrive at the place referred to in section **105**, the customs authority may proceed with processing and validating the declaration despite the fact that the goods have not yet arrived at that place but may not release the goods before their arrival at that place.

#### **Acceptance of clearance declarations by customs authority**

**171.** (1) The customs authority must accept a clearance declaration submitted to it and issue a receipt to the person who submitted the declaration if –

- (a) the declaration is in a format prescribed for the specific type of clearance declaration;
- (b) all the information required on the official form prescribed for the specific type of clearance declaration is furnished;<sup>156</sup>
- (c) the declaration is signed by or on behalf of the person submitting the declaration, if required for the specific type of clearance declaration; and
- (d) the declaration is submitted by a person entitled to submit the declaration.<sup>157</sup>

(2) The customs authority must refuse acceptance of a clearance declaration if the declaration does not comply with subsection (1).

<sup>156</sup> The official form should require at least all the information referred to in section **167(1)** or (3).

<sup>157</sup> See section **165** and other relevant sections specifying the persons who are entitled to submit clearance declarations.

(3) Acceptance of a clearance declaration in terms of subsection (1) may not be regarded as release of the goods for home use or the required customs procedure.

### **Validity of clearance declarations**

**172.** (1) A clearance declaration accepted in terms of section **171(1)** is despite such acceptance invalid if any of the information required on the official form prescribed for the specific type of clearance declaration<sup>158</sup> is incorrect or incomplete, but the declaration may be validated by an amendment in terms of section **174**.

(2) An amendment of a clearance declaration validates the declaration from the date of submission of the declaration, but such validation of the declaration does not affect any criminal proceedings that may be instituted, any administrative penalty that may be imposed or any other steps that may be taken as a result of the submission of an incorrect or incomplete declaration.

### **Determination of time of clearance of goods**

**173.** (1) For the purposes of this Act or a tax levying Act, the time of clearance of goods for home use or a customs procedure must be taken as the time when a clearance declaration in respect of the goods which complies with the requirements set out in section **171(1)** is received by the customs authority.

(2) The time of clearance in terms of subsection (1) is not affected if the clearance declaration is amended in terms of section **174**.

(3) If the clearance of goods is substituted in terms of section **112** or **122** the time of clearance of the goods must be taken as the date applicable to the goods in terms of section **112(3)** or **122(3)**.

### **Amendment of clearance declarations**

**174.** (1) (a) If a person clearing goods for home use or a customs procedure becomes aware, whether before or after the release of the goods, of any incorrect or incomplete information or other error on the declaration, that person must promptly submit to the customs authority an amended version of the clearance declaration to replace the version of the declaration containing the error.<sup>159</sup>

(b) A clearance declaration containing an error may be amended only if the customs authority gives permission for the declaration to be amended.<sup>160</sup>

<sup>158</sup> For information required on the official form for clearance declarations, see section **167**.

<sup>159</sup> See section **173(2)**. The submission of an amended declaration does not affect the time of clearance.

<sup>160</sup> See section **883(1)** for conditional granting of permissions.

(c) Permission in terms of paragraph (b) must be given if the amended version of the clearance declaration is submitted to the customs authority before it has commenced with either the verification of the information on the clearance declaration or the inspection of the goods to which the clearance declaration relates.

(2) If any of the circumstances pertaining to goods cleared for home use or a customs procedure change, the person clearing the goods must update any information on the clearance declaration to reflect the changed circumstances by promptly submitting to the customs authority an amended version of the clearance declaration reflecting the change to replace the existing version of the declaration.<sup>161</sup>

(3) If the customs authority becomes aware, whether before or after the release of any goods, of any incorrect or incomplete information or other error, or any outdated information, on the clearance declaration submitted in respect of the goods, it may direct the person clearing the goods to correct the error or to update the information by submitting to it, within a period specified in the direction, an amended version of the clearance declaration to replace the version of the declaration containing the error or the outdated information.

- (4) This section –
- (a) may be applied for amending –
    - (i) clearance declarations accepted by the customs authority in terms of section **171**; or
    - (ii) amended clearance declarations submitted in terms of this section; and
  - (b) may not be applied for replacing –
    - (a) a clearance for home use with a clearance for a customs procedure; or
    - (b) a clearance for a customs procedure with a clearance for another customs procedure or for home use.<sup>162</sup>

### **Withdrawal of clearance declarations**

**175.** (1) A person clearing goods for home use or a customs procedure may withdraw a clearance declaration submitted in respect of the goods if –

- (a) the goods are cleared in terms of section **170** and the goods do not arrive at the place referred to in section **105**;

<sup>161</sup> For instance if part of the goods were destroyed or lost, or if part of the goods are cleared for another customs procedure or for home use, or if part of the goods are abandoned.

<sup>162</sup> Clearance substitutions cannot be effected through mere amendment of the existing clearance declaration. In such cases the clearance declaration must be replaced by a new clearance declaration reflecting the new clearance. See section **112** for clearance substitutions of goods *before* release of the goods, section **122** for clearance substitutions of goods *after* release of the goods, and section **125** for clearance of goods under a customs procedure.

- (b) that clearance declaration is a duplicate clearance declaration that was erroneously submitted in respect of the same goods;
- (c) the goods are intended to remain under the customs procedure for which the goods are currently cleared;
- (d) this Act provides for the withdrawal of a clearance declaration in any specific circumstances; or
- (e) the customs authority on any other justifiable grounds gives permission to that person to withdraw the clearance declaration.

(2) The customs authority may in any of the circumstances referred to in subsection (1)(a) to (d) instruct the person clearing the goods to withdraw the clearance declaration.

### **Supporting documents**

**176.** (1) No person may clear goods for home use or a customs procedure unless the clearance is supported by –<sup>163</sup>

- (a) an invoice issued in respect of the goods by the person who –
  - (i) exports the goods to or from the Republic; or
  - (ii) supplied the goods that are exported to or from the Republic;
- (b) a transport document that has been issued in respect of the goods;
- (c) in the case of a clearance through a customs broker, the clearance instruction of the principal; and
- (d) any other documents as may be required in terms of another provision of this Act or the rules, a tax levying Act or other applicable legislation for the clearance of goods generally or for the specific purpose for which the goods are cleared.

(2) No document referred to in subsection (1) may be used as a document to support the clearance of goods for home use or a customs procedure as required by that subsection unless it contains the information required by this Act or a tax levying Act or as may be prescribed by rule.

(3) Subsection (1) applies subject to any exemption applicable in terms of a provision of this Act or granted by rule in respect of goods cleared for home use or a customs procedure in circumstances referred to in such provision or rule.

(4) Section **179** applies to supporting documents referred to in this section.

<sup>163</sup> Supporting documents are not submitted to customs unless required in terms of section **179**.

## Invoices

- 177.** (1) An invoice referred to in section **176(1)(a)** must –
- (a) be a true reflection of the transaction which is the cause for the goods to be exported to or from the Republic, as the case may be, including of –
    - (i) the nature of the transaction;
    - (ii) the goods to which the transaction relates; and
    - (iii) the amount paid or payable in terms of the transaction;
  - (b) describe the goods to which it relates, which must include a distinctive and permanent identification number, code, description, character or other mark allocated in respect of the goods by the person who issued the invoice;
  - (c) be the last invoice issued in respect of those goods, if more than one invoice was issued in respect of those goods as at the time of clearance<sup>164</sup> or, in the case of a clearance in terms of section **170**, as at the time of arrival of the goods at the place referred to in section **105**; and
  - (d) show –
    - (i) the date of issue;
    - (ii) the name and physical address of the issuer;
    - (iii) the name of the person to whom the invoice is issued, and the name of the consignee if the person to whom the invoice is issued is not the consignee;
    - (iv) the price paid or payable;
    - (v) any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate, remission or other information whatsoever that affects the price paid or payable; and
    - (vi) any other information as may be prescribed by rule.
- (2) The particulars on an invoice must describe the goods as they are or will be at the time when imported into the Republic or exported from the Republic, as the case may be.
- (3) For the purposes of this Act and a tax levying Act no change in the condition of the goods may be regarded as having occurred between the time when imported into the Republic and the time of any examination or analysis of the goods by the customs authority unless the person who submitted the clearance declaration provides proof of a change in the condition of the goods and the extent thereof.
- (4) A person clearing goods must in a manner and within a timeframe as may be prescribed by rule notify the customs authority of –
- (a) any change in –

<sup>164</sup> For time of clearance, see section **173**.

- (i) the particulars reflected on an invoice; or
  - (ii) circumstances affecting any of the matters referred to in subsection (1); or
- (b) any refund or additional amount or any deferred or secret discount, commission or any other credit or debit of whatever nature paid or received in connection with the goods and which is not disclosed on the invoice, whether paid or received directly or indirectly, in money or in kind or in any other way.

### **Amendment of invoices**

**178.** (1) An invoice supporting the clearance of goods for home use or a customs procedure must be amended –

- (a) if the amount paid or payable in terms of the transaction as reflected by the invoice is affected by any changed circumstance, including by –
  - (i) an amount credited or debited on the transaction by the issuer of the invoice;
  - (ii) a refund on the transaction made by or to or due by or to the issuer of the invoice; or
  - (iii) a payment in money or in kind, other than the amount payable in terms of the transaction, made by or to or due by or to the issuer of the invoice, whether directly or indirectly;
- (b) if there has been a change in the particulars, characteristics or nature of the goods after the date of issue of the invoice;
- (c) if the amendment is necessary to correct any incorrect information on the invoice; or
- (d) if the customs authority requests that the invoice for purposes of compliance with this Act or a tax levying Act be amended in a manner set out in the request.

(2) An invoice supporting the clearance of goods for home use or a customs procedure may be amended –

- (a) if the invoice needs to be split for any reason, including for purposes of facilitating tax administration; or
- (b) in any other circumstances as may be prescribed by rule.

(3) An invoice may be amended by the issuing of –

- (a) an amended invoice replacing the previous one;
- (b) a supplementary invoice; or
- (c) a debit or credit note.

(4) Any such amended invoice, supplementary invoice or debit or credit note must be supported by a statement setting out the reasons for the amendment and any documentary proof substantiating those reasons.

(5) A person clearing goods must in a manner and within a timeframe as may be prescribed by rule –

- (a) notify the customs authority of –
  - (i) any amendment to an invoice; or
  - (ii) the receipt of an amended invoice, supplementary invoice or debit or credit note; and
- (b) submit any amended invoice, supplementary invoice or debit or credit note to the customs authority if requested to do so.

(6) No amendment to an invoice is effective for the purposes of this Act or a tax levying Act unless accepted or requested by the customs authority.

### **Keeping of information in respect of clearance declarations**

**179.** A person clearing goods must –

- (a) keep the originals of any documents referred to in section **176** supporting the clearance of the goods and any other documents and records relating to information given in respect of that clearance or on the clearance declaration, in a manner and for a period as may be prescribed by rule; and
- (b) produce or submit those documents or records to the customs authority when requested to do so.<sup>165</sup>

## ***Part 2: Standard release processes and requirements***

### **Release notifications**

**180.** (1) Goods are released by the customs authority for home use or a customs procedure by –

- (a) transmitting an electronic message that the goods have been released to –
  - (i) the person clearing the goods or who submitted the clearance declaration; and
  - (ii) the release agent;
- (b) issuing to the person clearing the goods or who submitted the clearance declaration a computer printout stating that the goods have been released; or
- (c) any other method as may be prescribed by rule.

(2) A release notification must indicate –

- (a) whether the goods have been released for home use or a customs procedure, and if for a customs procedure, which procedure; and

<sup>165</sup> For methods of submission of documents to customs authority see section **878**.

- (b) whether the release is conditional, and if so the conditions.<sup>166</sup>

### **Delivery of released goods**

**181.** (1) (a) A release agent may not deliver goods to any person –

- (i) unless the goods are under the physical control of the release agent; and
- (ii) otherwise than on authority of a release notification.

(b) No person may take delivery of any goods from a release agent otherwise than on authority of a release notification.

(2) If a release agent delivers goods otherwise than on authority of a release notification –

- (a) the goods must, at the expense of the release agent, be returned to the release agent or be delivered to such other place as the customs authority may determine; and
- (b) the customs authority may hold the release agent liable for any tax payable on those goods.

(3) Goods released in terms of section **180** for a customs procedure must be removed from the place where the goods were released within the period applicable to the goods in terms of the provisions of this Act regulating that procedure.

### **Return messages**

**182.** The release agent in control of goods released in terms of section **180** must promptly notify the customs authority of –

- (a) receipt of the release notification in respect of the goods;
- (b) delivery of the goods to the person entitled to collect or receive the goods and removal of the goods from the place where they were released; and
- (c) any failure by such person to take delivery of or to remove the goods within the period referred to in section **181**(3), in the case of goods released for a customs procedure.

### **Amendment or withdrawal of release notifications**

**183.** The customs authority may amend or withdraw a release notification by –

- (a) transmitting an electronic message stating particulars of the amendment or that the release notification has been withdrawn to –
  - (i) the person clearing the goods; and
  - (ii) the release agent;

<sup>166</sup> See section **119** for conditional release of goods.



- (b) issuing to the person clearing the goods a computer printout stating particulars of the amendment or that the release notification has been withdrawn; or
- (c) any other method as may be prescribed by rule.

### ***Part 3: Other matters***

#### **Destruction, loss or theft of clearance and release documentation**

**184.** The customs authority may, at the request of a person entitled to a document relating to the clearance or release of goods, issue to that person a certified copy of the document if

–

- (a) the document is destroyed, lost or stolen; and
- (b) a copy of the document is in the possession of the Commissioner.

#### **Rules to facilitate implementation of this Chapter**

**185.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules as to –

- (a) the issuing, and use for clearance purposes, of invoices, transport documents and other supporting documents;
- (b) the combating of tax evasion and other malpractices relating to the issue and use of invoices, transport documents and other supporting documents;
- (c) the amendment and replacement of supporting documents;
- (d) the allocation of distinctive and permanent identification numbers, codes, descriptions, characters or other marks in respect of goods, and the persons by whom and the circumstances in which such identification numbers, codes, descriptions, characters or other marks must be allocated;
- (e) the use of such identification numbers, codes, descriptions, characters or other marks allocated in respect of goods, in invoices, transport documents and other supporting documents relating to such goods;
- (f) ...

#### **Offences in terms of this Chapter**

**186.** (1) A person clearing goods for home use or a customs procedure is guilty of an offence –

- (a) if the clearance declaration submitted by or on behalf of that person –
  - (i) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true; or
  - (ii) states, or omits to state, information which is stated or omitted with the intention to mislead; or

- (b) makes use of an invoice or other document to support the clearance of the goods which –
- (i) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true;
  - (ii) states, or omits to state, information which is stated or omitted with the intention to mislead;
  - (iii) in the case of an invoice, omits to state information which, if stated, would have caused the goods to be taxable or to be liable to a higher amount of tax or would have disqualified the goods from a rebate, refund, drawback or other entitlement in terms of this Act or a tax levying Act; or
  - (iv) is not the authentic one issued for the transaction between the person who issued the invoice or other document and the importer or exporter of the goods.

(2) A customs broker or other person submitting a clearance declaration on behalf of a person clearing goods for home use or a customs procedure is guilty of an offence if the clearance declaration submitted by or on behalf of that person –

- (a) contains a false statement or incorrect information which that customs broker or other person knows is not true or could not reasonably have believed to be true; or
- (b) states, or omits to state, information which is stated or omitted with the intention to mislead.

(3) A person who issued an invoice or other document which is used to support the clearance of goods is guilty of an offence if that invoice or other supporting document –

- (a) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true;
- (b) states, or omits to state, information which is stated or omitted with the intention to mislead;
- (c) was issued to conceal the true nature or particulars of the transaction between that person and the importer or exporter of the goods.

(4) A person is guilty of an offence if that person –

- (a) contravenes or fails to comply with section **174(1)**, **176(1)** or (2), **177(4)**, **178(5)** or **179**;
- (b) fails to comply with a direction in terms of section **174(4)**; or
- (c) takes delivery of goods in contravention of section **181(1)(b)**.

(5) The offences referred to in subsections (1), (2) and (3) are Category 1 offences.

## **CHAPTER 8 HOME USE OF GOODS**

### **Purpose and application of this Chapter**

**187.** (1) The purpose of this Chapter is to regulate the clearance and release of imported goods for home use.<sup>167</sup>

(2) This Chapter applies to imported goods intended for home use, excluding goods that are –

- (a) cleared for home use as –
  - (i) re-imported unaltered goods under the temporary export procedure in terms of Chapter **16**; or
  - (ii) outward processed compensating products under the outward processing procedure in terms of Chapter **19**; or
- (c) exempted in terms of section **106** from clearance requirements.

### **Clearance and release of goods for home use**

**188.** (1) Chapters **5** and **7** apply to the clearance and release of goods for home use under this Chapter except insofar as a provision of Chapter **5** or **7** is modified, qualified or deviated from in this Chapter.<sup>168</sup>

(2) Goods to be cleared for home use under this Chapter must be cleared in accordance with subsection (1).

### **Persons entitled to submit home use clearance declarations**

**189.** Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear imported goods under this Chapter for home use:<sup>169</sup>

- (a) the importer of the goods, if the importer is located in the Republic;
- (b) the agent in the Republic of the importer, if the importer is not located in the Republic;
- (c) the owner of the goods, if ownership in the goods has been transferred after the goods have been imported and that owner is located in the Republic;<sup>170</sup>

<sup>167</sup> For tax status of imported goods cleared for home use in terms of this Chapter, see section **137**.

<sup>168</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter **5** or **7** the provision of this Chapter prevails. See sections **103(3)** and **162(3)**.

<sup>169</sup> See section **165(1)(a)**.

- (d) the agent in the Republic of the owner referred to in paragraph (c), if that owner is not located in the Republic; or
- (e) a customs broker referred to in section 165(1)(b).

**Contents of home use clearance declarations**

190. A home use clearance declaration must, in addition to the information required in terms of section 167, state that the goods are cleared for home use under this Chapter.

**Clearance of goods imported through cross-border transmission lines, pipelines, cable-cars or conveyor belts**

191. The Commissioner may by rule –
- (a) prescribe special processes and requirements for the clearance and release for home use under this Chapter of electricity imported through licensed cross-border transmission lines and other goods imported through licensed cross-border pipelines or by means of licensed cross-border cable cars or conveyor belts; and
  - (b) exempt such electricity or other goods from any provision of this Act relating to the clearance or release of goods.

**Rules to facilitate implementation of this Chapter**

192. Rules made in terms of section 870 to facilitate the implementation of this Chapter may include rules prescribing –
- (a) additional processes or requirements for or relating to the clearance or release of goods for home use under this Chapter;
  - (b) .....

**CHAPTER 9**

**NATIONAL AND INTERNATIONAL TRANSIT**

*Part 1: Introductory provisions*

**Purpose and application of this Chapter**

193. (1) The purpose of this Chapter is to regulate the national and international transit procedures.

(2) This Chapter applies to the transport of imported goods not in free circulation, excluding goods transported –

- (a) in any of the circumstances referred to in section 131(2); or

<sup>170</sup> See section 126.

- (b) under a customs procedure other than national or international transit that provides for the transport of goods under that procedure.<sup>171</sup>

### **National and international transit<sup>172</sup>**

**194.** (1) National transit is a customs procedure that allows goods to which this Chapter applies, to be transported in the Republic from one customs controlled area to another customs controlled area not served by the same Customs Office.

(2) International transit is a customs procedure that allows goods to which this Chapter applies imported on board –

- (a) a foreign-going vessel or aircraft or a cross-border railway carriage –
- (i) to be transported through the Republic from the place in the Republic where the goods were off-loaded from the vessel, aircraft or railway carriage to a place of exit from where the goods are to be exported from the Republic;<sup>173</sup> and
  - (ii) to be exported from the Republic without complying with any export clearing formalities;<sup>174</sup> or
- (b) a vehicle –
- (i) to be transported through the Republic from the land border-post where the vehicle entered the Republic to a place of exit from where the goods are to be exported from the Republic, irrespective of whether the transport through the Republic takes place in the same or another vehicle or any other means of transport; and
  - (ii) to be exported from the Republic without complying with any export clearing formalities.

(3) The international transit procedure is not available for imported goods of a category prescribed by rule.

### **Commencement and completion of national transit procedure**

**195.** (1) Goods come under the national transit procedure when the goods are cleared for national transit. The national transit procedure is, subject to subsection (2), completed

<sup>171</sup> For instance the warehousing procedure, the inward processing procedure, etc.

<sup>172</sup> For tax status of goods under the national or international transit procedure, see sections **139** and **140**. For consequences of non-compliance with the transit procedures, see sections **127** and **130**.

<sup>173</sup> International transit does not include a situation where goods are not off-loaded from and remain on board a foreign-going vessel or aircraft or cross-border railway carriage until the vessel, aircraft or railway carriage again leaves the Republic. In such a case the goods are in terms of section **106** exempted from the obligation to be cleared.

<sup>174</sup> Chapter **15** regulating the clearance of goods for export from the Republic does not apply to the export from the Republic of goods that are cleared and released for international transit. See section **346(3)**.

when the goods are cleared and released for another permissible customs procedure or for home use.

(2) The national transit procedure, in relation to any goods, ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section **124(2)**.

### **Commencement and completion of international transit procedure**

**196.** (1) Goods come under the international transit procedure when the goods are cleared for international transit. The international transit procedure is, subject to subsection (2), completed when the goods are exported from the Republic.

(2) The international transit procedure, in relation to any goods, ends before its completion if –

- (a) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
- (b) completion of the procedure is interrupted by an occurrence referred to in section **124(2)**.

### **Extent to which Chapters 5 and 7 apply**

**197.** Chapters **5** and **7**, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter,<sup>175</sup> apply to goods under the national or international transit procedure, including to the clearance and release of goods for national or international transit.

### **Limiting customs seaports and airports for international transit purposes**

**198.** (1) The Commissioner may, subject to subsection (3), by rule limit the customs seaports and airports where goods may be –

- (a) off-loaded from foreign-going vessels or aircraft for international transit; or
- (b) loaded on board foreign-going vessels or aircraft for export from the Republic under the international transit procedure.

(2) If the customs seaports and airports for international transits have been limited in terms of subsection (1) no person may –

- (a) off-load goods from foreign-going vessels or aircraft for international transit other than at a customs seaport or airport determined in terms of subsection (1)(a); or

<sup>175</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter **5** or **7** the provision of this Chapter prevails. See sections **103(3)** and **162(3)**.

- (b) load goods on board foreign-going vessels or aircraft for export from the Republic under the international transit procedure other than at a customs seaport or airport determined in terms of subsection (1)(b).

(3) When limiting the customs seaports and airports in terms of subsection (1) for the international transit procedure, the Commissioner must act in accordance with the directions of the Minister acting in consultation with the Cabinet members responsible for transport, trade and industry and home affairs.

### **Application of other legislation to goods under international transit**

**199.** (1) Legislation, other than this Act or the Counterfeit Goods Act, regulating the import into, or the possession in, the Republic of goods for the purpose of protecting South African goods for economic reasons, does not apply to imported goods that are cleared and released for international transit.

- (2) Subsection (1) ceases to apply if –
- (a) the release of the goods for international transit is withdrawn in terms of section **120**,<sup>176</sup> or
- (b) the goods are cleared and released for another customs procedure or home use, as may be permissible in the circumstances.

### ***Part 2: Clearance and release of goods for transit***

#### **Clearance of goods for transit**

**200.** Goods to be cleared for national or international transit must be cleared in accordance with section **197**.

#### **Persons entitled to submit transit clearance declarations**

- 201.** (1) Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear goods for transit:<sup>177</sup>
- (a) the importer of the goods, if the importer is located in the Republic;<sup>178</sup>
- (b) the agent in the Republic of the importer, if the importer is not located in the Republic;
- (c) the owner of the goods, if ownership in the goods has been transferred after the goods have been imported and that owner is located in the Republic;<sup>179</sup>

<sup>176</sup> For consequences when release of goods is withdrawn, see section **121**.

<sup>177</sup> See section **165(1)(a)**.

<sup>178</sup> See section **1(3)(a)**.

<sup>179</sup> See section **126A**.

- (d) the agent in the Republic of the owner referred to in paragraph (c), if that owner is not located in the Republic;
- (e) the carrier who is to carry out the transit operation, if that carrier is located in the Republic;
- (f) the agent in the Republic of the carrier who is to carry out the transit operation, if that carrier is not located in the Republic; or
- (g) a customs broker referred to in section **165(1)(b)**.

(2) If a clearance declaration is submitted by a carrier or a carrier's agent on behalf of a person referred to in subsection (1)(a), (b), (c) or (d) that person and not the carrier or a carrier's agent must for purposes of this Act and a tax levying Act be regarded to be the person clearing the goods.<sup>180</sup>

### **Contents of transit clearance declarations**

**202.** A transit clearance declaration must, in addition to the information required in terms of section **167**, state –

- (a) that the goods are cleared for national or international transit;
- (b) the starting point of the transit operation contemplated in section **206(1)** and the delivery point of the transit operation contemplated in section **206(2)**;
- (c) the customs code of the carrier who will carry out the transit operation, if the transit operation is to be carried out by a licensed carrier;
- (d) the customs code of the agent of the carrier who is to carry out the transit operation, if the transit operation is to be carried out by a carrier not located in the Republic;
- (e) the mode of transport, and if multi-modal transport, particulars of such transport; and
- (f) the route over which the goods will be transported, if by road or rail.

### **Use of other documents as transit clearance declarations for postal articles**

**204.** An advance cargo arrival notice submitted in terms of section **52(2)** or **58(2)** in respect of postal articles to be handled by the South African Post Office, a South African Post Office transport document or another document as may be prescribed by rule may serve or be submitted as a transit clearance declaration to clear postal articles for national or international transit by or on behalf of the South African Post Office, provided that such document reflects the information that must be contained in transit clearance declarations, subject to section **167(2)**.<sup>181</sup>

<sup>180</sup> See also section **166**.

<sup>181</sup> See section **232** read with section **167**.



### ***Part 3: Transit operations***

#### **Transit operations**

**205.** A national or international transit operation may not commence unless the goods are cleared and released for the transit.<sup>182</sup>

#### **Starting and delivery points of transit operations**

**206.** (1) The starting point of a transit operation must be, as may be appropriate –

- (a) the customs seaport or airport where the goods were off-loaded from the foreign-going vessel or aircraft on board of which the goods were imported into the Republic;
- (b) the rail cargo terminal where the goods were off-loaded from the cross-border railway carriage in which the goods were imported into the Republic;
- (c) the land border-post where the vehicle on board of which the goods were imported entered the Republic; or
- (d) another customs controlled area where goods are in temporary storage or warehoused.

(2) In the case of a national transit, the delivery point of a transit operation must be the licensed premises to which the goods are consigned or from where the goods are to be delivered.

(3) In the case of an international transit, the delivery point of a transit operation, must be –

- (a) if the goods are to be exported by sea, any licensed premises at the customs seaport where the goods are to be loaded on board the foreign-going vessel in which the goods are to be exported;
- (b) if the goods are to be exported by air, any licensed premises at the customs airport where the goods are to be loaded on board the foreign-going aircraft in which the goods are to be exported;
- (c) if the goods are to be exported by rail, any licensed premises at the railway station where the goods are to be loaded on board the cross-border railway carriage in which the goods are to be exported; or
- (d) if the goods are to be exported by road, the land border-post where the goods are to be exported.

<sup>182</sup> Goods released by the customs authority for transit remain in terms of section 28 subject to customs control despite such release.

(4) Despite subsection (1), (2) or (3), the customs authority may in a specific case allow or direct<sup>183</sup> that any other place must be the starting or delivery point of the transit operation.

### **Commencement and completion periods for transit operations<sup>184</sup>**

**207.** (1) A transit operation must, subject to sections **212(1)(g)** and **875**, commence at the starting point of the operation indicated in the transit clearance declaration within such period from release of the goods for transit, as may be prescribed by rule.

(2) Goods under national transit must, subject to sections **212(1)(g)** and **875**, reach the delivery point indicated in the transit clearance declaration within such period from commencement of the transit operation as may be prescribed by rule.

(3) Goods under international transit must, subject to sections **212(1)(g)** and **875** -

(a) reach the delivery point indicated in the transit clearance declaration within a period from commencement of the transit operation as may be prescribed by rule;

(b) be loaded for export on board the foreign-going vessel or aircraft or cross-border railway carriage in which the goods are to be exported from the Republic within a period from arrival of the goods at the delivery point as may be prescribed by rule; and

(c) in the case of an international transit by road, be exported within such period from commencement of the transit operation as may be prescribed by rule.

(4) If subsection (2) or (3) is not complied with in respect of the goods, the goods must in terms of section **127(1)** for tax purposes be regarded to be cleared for home use under Chapter **8**.<sup>185</sup>

### **Limitations on routes for transits**

**208.** (1) The routes over which goods may for transit operations be transported by road or railway line may be limited to routes as may be prescribed by rule or as the customs authority may determine in a specific case.

(2) If the route for a transit operation by road or railway line between any specific places has been limited in terms of subsection (1) no person may carry out a transit

<sup>183</sup> Such permission or direction may be issued subject to conditions. See section **883**.

<sup>184</sup> Commencement and completion of a transit operation must be distinguished from the commencement and completion of the transit procedure in terms of sections **195** and **196**.

<sup>185</sup> For tax consequences if goods are regarded to be cleared for home use, see section **153**.

operation between those places over a road or railway route other than the route prescribed or determined in terms of that subsection.

### **Redirection of goods from starting and to delivery points**

**209.** No person may redirect goods from the starting point or to the delivery point of a transit operation as indicated in the transit clearance declaration without the prior written permission of the customs authority.

### **Carriers permitted to carry out transit operations**

**210.** (1) A transit operation may be carried out only by a carrier –

- (a) licensed to carry out transit operations; or
- (b) represented in the Republic by a registered agent, if the carrier is not located in the Republic.

(2) The carrier carrying out a transit operation must be –

- (a) the person mentioned in the transit clearance declaration as the carrier of the goods; or
- (b) a carrier subcontracted by the carrier referred to in paragraph (a).

(3) Goods in transit may be transported only in accordance with this Act, including

–

- (a) any conditions subject to which the carrier was licensed;
- (b) any directions issued by the customs authority in terms of section **212** or **216**; and
- (c) any rules as may be prescribed.

### **Technical specifications or requirements of vehicles or containers used in transit of goods**

**211.** (1) A vehicle or container used in the transit of goods must comply with such requirements as may be prescribed by rule to secure the goods during the transit operation.

(2) If a vehicle or container does not comply with the prescribed requirements, the customs authority may withhold release of the goods for transit in that vehicle or container.

### **Measures to ensure integrity of transit operations**

**212.** (1) The customs authority may, in addition to its enforcement functions,<sup>186</sup> take any steps or issue any directions necessary to guard against any unauthorised interference with goods in transit, including by –

<sup>186</sup> See Chapter 32.

- (a) pre-approving the vehicle or container in which the goods are to be transported;
- (b) marking or sealing the holding compartment of the vehicle or the container;
- (c) stipulating the mode of transport;
- (d) stipulating the route to be followed;
- (e) stipulating the specific place to which the goods must be delivered;
- (f) requiring the provision of security in terms of Chapter **30** or any security additional to security already given in terms of that Chapter;
- (g) shortening the time limit within which the transit operation must commence and be completed in terms of section **207**; and
- (h) requiring that the goods be transported under supervision of a customs escort.

(2) Any steps taken or directions issued by the customs authority in terms of subsection (1) are subject to such conditions or specifications as –

- (a) may be prescribed by rule; or
- (b) the customs authority may determine in a specific case.

#### **Transport of transit goods with other goods in same vehicle**

**213.** Goods in transit may only in accordance with any requirements as may be prescribed by rule be transported with other goods on the same vehicle.

#### **Transfer of goods in transit to other vehicles or containers**

**214.** (1) Once a transit has commenced the goods may only with the permission of the customs authority and only in accordance with any requirements as may be prescribed be transferred from the vehicle in which the goods are transported to another vehicle.

(2) Permission in terms of subsection (1) may be given only in the case of a breakdown, accident or other circumstances as may be prescribed by rule.

(3) If goods in transit are transferred to another vehicle operated by another carrier the new carrier must –

- (a) give notice to the customs authority that the goods were transferred to another vehicle; and
- (b) endorse that carrier's transport document or road manifest with –
  - (i) details of the previous vehicle on which the goods were transported, as may be prescribed by rule;
  - (ii) the name of the previous carrier; and
  - (iii) the number of the previous carrier's transport document or road manifest, as may be applicable.

- (4) This section does not apply to the multi-modal transport of goods in transit.

### **Multi-modal transit of goods**

**215.** If a transit is carried out by means of multi-modal transport of the transit goods, the goods may be transferred from one means of transport to another only –

- (a) within a customs controlled area; and
- (b) in accordance with any other requirements as may be prescribed by rule.

### **Interruptions in transit operations**

**216.** (1) The customs authority may permit or direct that a transit operation of goods be interrupted for a specific purpose, including for –

- (a) re-packing of the goods;
- (b) tallying the goods;
- (c) sorting the goods;
- (d) cleaning the goods;
- (e) carrying out activities aimed at preserving the condition of, or maintaining, the goods;
- (f) inspecting the goods; or
- (g) sealing the goods or the holding compartment of the vehicle or the container.

(2) The conditions subject to which a permission or direction referred to in subsection (1) may be issued in terms of section **883** may include conditions specifying –

- (a) the place where the activities referred to in subsection (1) must be carried out; and
- (b) the time when those activities must be carried out and within which those activities must be completed.

### **Accidents and other unforeseen events**

**217.** (1) The carrier transporting goods in transit must promptly report to the customs authority electronically in accordance with section **879** any breakdown, accident or other unforeseen event occurring in the course of transporting the goods which affects the transit.

(2) The carrier transporting goods in transit affected by an event referred to in subsection (1) must comply with any directions issued by the customs authority in connection with the goods.<sup>187</sup>

### **Transit goods transported by road carriers**

<sup>187</sup> If goods are damaged, destroyed or lost due to an accident or other occurrence, Chapter **24** becomes applicable.

**218.** (1) A road carrier transporting goods in transit must keep a road manifest of all the cargo transported on board the vehicle.

(2) A road manifest referred to in subsection (1) must –

- (a) be in the format as may be prescribed by rule;
- (b) identify the goods in transit; and
- (c) distinguish the transit goods from any other goods on board the vehicle.

(3) Until the transit of the goods is completed, the carrier transporting the goods must keep in the vehicle –

- (a) the road manifest; and
- (b) a copy of the release notification issued in respect of the transit goods.

### **Completion of transit operations**

**219.** A transit operation is completed when the transit goods are delivered at the delivery point indicated in the transit clearance declaration.<sup>188</sup>

### **Completion procedures**

**220.** (1) Upon completion of a transit operation, the carrier who has carried out the transit operation or the person clearing the goods for transit must –

- (a) submit to the customs authority proof that the transit operation has been completed, if the customs authority requests such proof from the carrier or person clearing the goods; and
- (b) comply with such other requirements as may be prescribed by rule for such carrier or person.

(2) Proof requested in terms of subsection (1) must be –

- (a) in a format and contain the information as may be prescribed by rule;
- (b) submitted within such period as may be prescribed by rule; and
- (c) be submitted electronically in accordance with section **879**, but may in the case of a person clearing the goods for transit be submitted in paper format.

(3) A carrier is relieved of compliance with subsection (1) if the person clearing the goods for transit complies with that subsection.

### **Responsibility for ensuring compliance with this Act**

<sup>188</sup> Note the distinction between completion of an international transit operation which ends upon delivery of the goods at the delivery point and completion of the international transit procedure which ends upon export of the goods.

**221.** (1) The responsibility for ensuring that a transit operation is carried out and completed in accordance with this Act and any steps taken or directions issued by the customs authority in terms of section **212** rests with the carrier who carries out the transit operation.

(2) If the carrier who carries out the transit operation is not the person who submitted the clearance declaration or has subcontracted the transport of the goods to another carrier, the responsibility referred to in subsection (1) rests jointly and severally with the carrier and that other person or other carrier. This subsection does not apply to a customs broker if the person who submitted the clearance declaration is a customs broker.

(3) The responsibility conferred in terms of subsection (1) does not absolve any other person from complying with this Act or any steps or directions referred to in that subsection in connection with the transit of the goods.

#### ***Part 4: Other matters***

##### **Rules to facilitate implementation of this Chapter**

**222.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) prescribing additional requirements for the clearance or release of goods for national or international transit or relating to goods under the national or international transit procedure;
- (b) regulating the application of this Chapter to the coastwise carriage of imported goods under national transit, including conditions that must be complied with if imported goods under national transit are transported in coasting vessels also carrying goods in free circulation;
- (c) .....

##### **Offences in terms of this Chapter**

**223.** (1) A person is guilty of an offence if that person contravenes section **198(2)(a)** or (b), **209** or **210(1)**.

(2) A carrier carrying out a transit operation in respect of any goods is guilty of an offence –

- (a) if that carrier fails to comply with section **217(1)**, **218(1)** or (3) or **220(1)**;
- (b) if section **205**, **207(1)**, (2) or (3)(a) or (c), **208(2)**, **210(2)** or (3), **211(1)**, **213**, **214(1)** or (3), **215**, is contravened or not complied with in respect of those goods; or

(c) if a direction issued or a condition imposed in terms of section **212**, **216** or **217(2)** is contravened or not complied with in respect of those goods.

(3) A person clearing goods for international transit is guilty of an offence if section **207(1)(b)** is not complied with in respect of those goods.

(4) A contravention of section **205** or **209** is a Category 1 offence.

**CHAPTER 10**  
**TRANSHIPMENT PROCEDURE**  
*Part 1: Introductory provisions*

**Purpose and application of this Chapter**

**224.** (1) The purpose of this Chapter is to regulate the transshipment procedure.

(2) This Chapter applies to the transfer of imported goods at a customs seaport or airport from one foreign-going vessel or aircraft to another.

**Transshipment**<sup>189</sup>

**225.** (1) Transshipment is a customs procedure that allows imported goods –

(a) to be transferred at a customs seaport or airport from the foreign-going vessel or aircraft in which those goods were imported to another foreign-going vessel or aircraft at that seaport or airport in which those goods are to be exported from the Republic; and

(b) to be exported from the Republic without complying with any export clearing formalities.<sup>190</sup>

(2) The transshipment procedure is not available for goods of a category prescribed by rule.

**Commencement and completion of transshipment procedure**

**226.** (1) Goods come under the transshipment procedure when the goods are cleared for transshipment. The transshipment procedure is, subject to subsection (2), completed when the goods are exported from the Republic.

<sup>189</sup> For tax status of goods under the transshipment procedure, see section **141**. For consequences of non-compliance with transshipment procedure, see sections **127** and **130**.

<sup>190</sup> Chapter **17** regulating the clearance of goods for export from the Republic does not apply to the export from the Republic of goods cleared and released for transshipment. See section **346(3)**.



(2) The transshipment procedure, in relation to any goods, ends before its completion if –

- (a) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
- (b) completion of the procedure is interrupted by an occurrence referred to in section **124(2)**.

### **Extent to which Chapters 5 and 7 apply**

**227.** Chapters **5** and **7**, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter,<sup>191</sup> apply to goods under the transshipment procedure, including to the clearance and release of goods for transshipment.

### **Limitation of customs seaports and airports for transshipment purposes**

**228.** (1) The Commissioner may by rule limit the customs seaports and airports where goods may be transhipped under the transshipment procedure.

(2) If the customs seaports or airports where goods may be transhipped have been limited in terms of subsection (1), no person may tranship goods under the transshipment procedure at a customs seaport or airport other than a seaport or airport determined in terms of that subsection.

(3) When limiting the customs seaports and airports in terms of subsection (1) for the transshipment procedure, the Commissioner must act in accordance with the directions of the Minister acting in consultation with the Cabinet members responsible for transport, trade and industry and home affairs.

### **Application of other legislation to goods under transshipment**

**229.** (1) Legislation, other than this Act or the Counterfeit Goods Act, regulating the import into, or the possession in, the Republic of goods for the purpose of protecting South African goods for economic reasons, does not apply to imported goods that are cleared and released for transshipment.

- (2) Subsection (1) ceases to apply if –
- (a) the release of the goods for international transit is withdrawn in terms of section **120**,<sup>192</sup> or

<sup>191</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter **5** or **7** the provision of this Chapter prevails. See sections **103(3)** and **162(3)**.

<sup>192</sup> For consequences when release of goods is withdrawn, see section **121**.

- (b) the goods are cleared and released for another customs procedure or home use, as may be permissible in the circumstances.

### ***Part 2: Clearance and release of goods for transshipment***

#### **Clearance of goods for transshipment**

**230.** (1) No goods may, subject to sections **106(1)(f)** and **110(1)(g)**, be transferred at a customs seaport or airport from one foreign-going vessel or aircraft to another unless the goods are cleared and released for transshipment.

(2) Goods to be cleared for transshipment must be cleared in accordance with section **227**.

#### **Persons entitled to submit transshipment clearance declarations**

**231.** (1) Only the following persons may, subject to section **165(2)**, submit a clearance declaration to clear goods for transshipment:<sup>193</sup>

- (a) the cargo reporter referred to in section **52(2)** or **58(2)** who is responsible for the transshipment goods, if that cargo reporter is located in the Republic;
- (b) the agent in the Republic of that cargo reporter, if that cargo reporter is not located in the Republic; or
- (c) a customs broker referred to in section **165(1)(b)**.

(2) A transshipment clearance declaration must be submitted –

- (a) before the goods arrive in the Republic; and
- (b) within the same timeframes applicable to advance cargo arrival notices in terms of section **52(2)** or **58(2)**, as may be applicable.

#### **Contents of transshipment clearance declarations**

**232.** (1) A transshipment clearance declaration must, in addition to the information required in terms of section **167**, state –

- (a) that the goods are cleared for transshipment;
- (b) that the goods will be off-loaded in the Republic for purposes of transshipment;
- (c) the date and time when the goods are due to arrive in the Republic;
- (d) the customs seaport or airport where the transshipment operation will be carried out;
- (e) particulars of the vessel or aircraft on board of which the goods are to be transported out of the Republic; and
- (f) any other information prescribed by rule.

<sup>193</sup> See section **165(1)(a)**.

(2) If the particulars referred to in subsection (1)(d) are not available to the cargo reporter at the time when the transshipment clearance declaration is submitted, those particulars may be submitted separately at any later stage but before the goods are loaded on board the vessel or aircraft that will transport the goods out of the Republic.

### **Supporting documents**

**234.** Section 176(1) does not apply in respect of the transshipment of goods.

### **Use of advance cargo arrival notices as transshipment clearance declarations**

**235.** An advance cargo arrival notice submitted in terms of section 52(2) or 58(2) in respect of the goods to be transhipped may serve as a transshipment clearance declaration, provided that the notice reflects the information that must be contained in transshipment clearance declarations, subject to section 167(2).<sup>194</sup>

## ***Part 3: Transshipment operations***

### **Transshipment operations**

**236.** A transshipment operation may not commence unless the goods are cleared and released for transshipment.<sup>195</sup>

### **Commencement and completion of transshipment operations**

**237.** A transshipment operation –

- (a) commences when the transshipment goods are off-loaded from the vessel or aircraft on board of which the goods were imported into the Republic; and
- (b) is completed when the transshipment goods are loaded on board the vessel or aircraft that will transport the goods out of the Republic.

### **Transshipment goods to be secured on licensed premises**

**238.** (1) Transshipment goods off-loaded from a vessel or aircraft referred to in section 237(a) at a customs seaport or airport where the transshipment operation is carried out must –

- (a) be secured at the terminal where the goods are off-loaded or on premises licensed for the receipt, storage and handling of transshipment goods; and
- (b) if secured on premises referred to in paragraph (a), be kept on those premises until the goods are moved to a terminal at that seaport or airport where the goods are to be loaded on board the vessel or aircraft referred to in section 237(b).

<sup>194</sup> See section 232 read with section 167.

<sup>195</sup> Goods released by the customs authority for transshipment remain in terms of section 28 subject to customs control despite such release.

(2) No transshipment goods may be moved from one customs controlled area to another customs controlled area at the customs seaport or airport where the transshipment operation is carried out without giving notice to the customs authority as may be prescribed by rule.

**Commencement and completion periods for transshipment operations<sup>196</sup> and export of transshipment goods**

**239.** (1) A transshipment operation must, subject to sections **243(1)(c)** and **875**, commence within such period from release of the goods for transshipment as may be prescribed by rule.

(2) A transshipment operation must, subject to sections **243(1)(c)** and **875**, be completed within such period from commencement of the transshipment operation as may be prescribed by rule.

(3) If subsection (2) is not complied with in respect of transshipment goods, the goods must in terms of section **127(1)** for tax purposes be regarded to be cleared for home use under Chapter **8**.<sup>197</sup>

**Non-compliance with completion periods**

**240.** (1) If a transshipment operation is unlikely to commence within the period applicable to the goods in terms of section **239(1)**, the cargo reporter responsible for the goods must –

- (a) immediately notify the customs authority of the delay, and the reasons for the delay; and
- (b) thereafter, if the period within which the transshipment operation must commence has been extended in terms of section **875**, notify the customs authority regularly as may be prescribed by rule, of the situation with regard to the commencement of the transshipment operation.

(2) If a transshipment operation is not completed within the period applicable to the goods in terms of section **239(2)**, the licensee of the customs controlled area where the transshipment goods are temporarily stored or handled must immediately notify the customs authority of the delay, and the reasons for the delay.

<sup>196</sup> Commencement and completion of transshipment operation must be distinguished from the commencement and completion of the transshipment procedure in terms of section **226**.

<sup>197</sup> For tax consequences if goods are regarded to be cleared for home use, see section **153**.

(3) If transshipment goods loaded on board the vessel or aircraft that will transport the goods out of the Republic, are not exported from the Republic without delay, the cargo reporter responsible for the goods must –

- (a) immediately notify the customs authority of the delay, and the reasons for the delay; and
- (b) thereafter notify the customs authority regularly as may be prescribed by rule, of the situation with regard to the export of the goods from the Republic.

**Delivery of transshipment goods for loading on board outgoing vessels or aircraft**

**241.** (1) The cargo reporter referred to in section **52(2)** or **58(2)** responsible for transshipment goods must ensure that the goods are delivered to the terminal at the customs seaport or airport where the goods are to be loaded on board the aircraft or vessel that will transport the goods out of the Republic.

(2) If transshipment goods are to be transported by public road from the customs controlled area where the goods are secured in terms of section **238** to the terminal where the goods are to be loaded on board the vessel or aircraft that will transport the goods out of the Republic –

- (a) those goods may not be transported by a person other than a carrier licensed for that purpose;
- (b) the licensee of the premises where those goods are secured may not give delivery of the goods to anyone other than such a licensed carrier; and
- (c) the carrier transporting the goods may not give delivery of the goods to anyone other than the licensee of the terminal from where the goods are to be loaded on board the vessel or aircraft that will transport the goods out of the Republic.

**Responsibilities of licensees handling or storing transshipment goods**

**242.** (1) The licensee of premises where transshipment goods are secured in terms of section **238** must keep such records of the receipt, handling, storage and delivery of the goods as may be prescribed by rule.

(2) The licensee of a terminal where transshipment goods are to be loaded on board a vessel or aircraft that will transport the goods out of the Republic must immediately notify the customs authority if the goods are removed from the terminal for a purpose other than the loading of the goods on board that aircraft or vessel.

(3) An outturn report submitted in respect of transshipment goods by a licensee in terms of Part **6** of Chapter **3** must –

- (a) declare that the goods to which it relates are transshipment goods; and
- (b) reflect all the information as may be prescribed by rule for such goods.

### **Measures to ensure integrity of transshipment operations**

**243.** (1) The customs authority may, in addition to its enforcement functions,<sup>198</sup> take any steps or issue any directions necessary to identify transshipment goods and to guard against any unauthorised interference with the goods whilst in the Republic or during the transportation thereof out of the Republic, including by –

- (a) stipulating the specific customs controlled area to which the goods must be delivered;
- (b) requiring security in terms of Chapter **30** or any security additional to security already given in terms of that Chapter;
- (c) shortening the time limit within which the transshipment operation must in terms of section **239(1)** commence or in terms of section **239(2)** be completed or the goods be exported from the Republic; and
- (d) requiring that the goods be transhipped and exported from the Republic under customs escort.

(2) Any steps taken or directions issued by the customs authority in terms of subsection (1) are subject to such conditions or specifications as –

- (a) may be prescribed by rule; or
- (b) the customs authority may determine in a specific case.

### ***Part 4: Other matters***

#### **Rules to facilitate implementation of this Chapter**

**244.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) additional requirements for the clearance or release of goods for transshipment or relating to goods under the transshipment procedure;
- (b) .....

#### **Offences in terms of this Chapter**

**245.** (1) A person is guilty of an offence if that person contravenes or fails to comply with –

- (a) section **228(2)**, **230(1)**, **236(1)**, **238(2)** or **241(2)(a)**; or
- (b) a direction issued or a condition imposed in terms of section **243(1)** applicable to that person;

<sup>198</sup> See Chapter **32**.

- (2) A person clearing goods for transshipment is guilty of an offence –
- (a) if section **236**, **238**(1), **239**(1) or (2), **240**, **241**(1) is not complied with with regard to those goods; or
- (b) if that person fails to comply with section **240**(1) or (3) or **241**.
- (3) The licensee of a customs controlled area is guilty of an offence if that person contravenes or fails to comply with section **240**(2), **241**(2)(b) or **242**(1) or (2).
- (4) A carrier is guilty of an offence if that carrier fails to comply with section **241**(2)(c).
- (5) A contravention of section **230**(1) or **236** is a Category 1 offence.

## **CHAPTER 11**

### **TEMPORARY ADMISSION PROCEDURE**

#### *Part 1: Introductory provisions*

##### **Purpose and application of this Chapter**

**246.** (1) The purpose of this Chapter is to regulate the temporary admission procedure.

(2) This Chapter applies to goods imported into the Republic temporarily.

##### **Temporary admission**<sup>199</sup>

**247.** (1) Temporary admission is a customs procedure that allows imported goods not in free circulation –

- (a) to be used in the Republic temporarily for a specific purpose and for a specific period on condition that the goods are re-exported within that period without having undergone any change except for maintenance and normal wear and tear due to the use made of the goods whilst in the Republic;
- (b) to be moved freely in the Republic under that procedure; and
- (c) to be cleared for re-export and re-exported under that procedure.

(2) The temporary admission procedure is available only for imported goods

<sup>199</sup> For tax status of goods under the temporary admission procedure, see section **142**. For consequences of non-compliance with the temporary admission procedure, see sections **127** and **130**.

which –

- (a) fall within a category of goods to which Part 2, 4 or 5 applies; and
- (b) are of a nature that will make them, when re-exported, likely to be identified as the same goods.

### **Commencement and completion of temporary admission procedure**

**248.** (1) Goods come under the temporary admission procedure –

- (a) when cleared for temporary admission in terms of Part 2;
- (b) when cleared for temporary admission in terms of international customs arrangements referred to in Part 4; or
- (c) upon entering the Republic, in the case of goods that automatically come under the temporary admission procedure in terms of Part 5.

(2) The temporary admission procedure is, subject to subsection (3), completed when the goods are exported from the Republic.

(3) The temporary admission procedure, in relation to any goods, ends before its completion –

- (a) if the goods before completion of the temporary admission procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
- (b) if completion of the temporary admission procedure is interrupted by an occurrence referred to in section 124(2).

### **Extent to which Chapters 5 and 7 apply**

**249.** Chapters 5 and 7, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter, apply to all goods under the temporary admission procedure,<sup>200</sup> including to the clearance and release of goods for –

- (a) temporary admission in terms of Part 2 or 4;
- (b) export under the temporary admission procedure in terms of Part 3 or 4.

### **Application of other legislation to goods under temporary admission**

**250.** (1) Legislation, other than this Act or the Counterfeit Goods Act, regulating the import into, or the possession in, the Republic of goods for the purpose of protecting South African goods for economic reasons, does not apply to goods that are cleared and released for the temporary admission procedure.

<sup>200</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter 5 or 7 the provision of this Chapter prevails. See sections 103(3) and 162(3).



- (2) Subsection (1) ceases to apply if –
- (a) the release of the goods for international transit is withdrawn in terms of section **120**,<sup>201</sup> or
  - (b) the goods are cleared and released for another customs procedure or home use, as may be permissible in the circumstances.

## ***Part 2: Temporary admission of goods in terms of clearance and release procedures***

### **Application of this Part**

**251.** (1) This Part –  
applies to goods identified in the Customs Tariff as goods that may be cleared for temporary admission in accordance with this Part, excluding goods cleared in accordance with the international clearance arrangements provided for in Part **4** or that automatically come under the temporary admission procedure in terms of Part **5**.

(2) Goods to be cleared for temporary admission under this Part must be cleared in accordance with section **249(a)**.

### **Persons entitled to submit temporary admission clearance declarations**

**252.** (1) Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear goods for temporary admission:<sup>202</sup>

- (a) the importer of the goods, if the importer is located in the Republic;
- (b) the agent in the Republic of the importer, if the importer is not located in the Republic; or
- (c) a customs broker referred to in section **165(1)(b)**.

(2) The provisions of Chapter **7** relating to supporting documents apply to goods that are cleared for temporary admission only to the extent as may be prescribed by rule.

### **Contents of temporary admission clearance declarations**

**253.** A temporary admission clearance declaration must, in addition to the information required in terms of section **167**, state –

- (a) that the goods are cleared for temporary admission under this Part;
- (a) the purpose for which the goods are cleared for temporary admission; and
- (b) the period for which the goods are expected to remain in the Republic.

<sup>201</sup> For consequences when release of goods is withdrawn, see section **121**.

<sup>202</sup> See section **165(1)(a)**.

### **Release notifications to state period of temporary admission**

**254.** (1) If goods are released for temporary admission, the release notification must state the period for which the goods may remain in the Republic under temporary admission.

- (2) A period determined in terms of subsection (1) may not exceed –
- (a) the maximum period as may be prescribed by rule for the category in which the goods fall; or
  - (b) one year from the date of clearance of the goods, if no period is prescribed for the relevant category of goods.

(3) The period mentioned in a release notification may be extended in terms of section **875** only once except if good cause is shown for an additional extension.

### **Simplified clearance and release for commercial trucks entering Republic temporarily**

**255.** Trucks entering the Republic as a means of transport currently in use for the transport of goods in the ordinary course of international trade may, despite the other provisions of this Part, be cleared and released for temporary admission in accordance with simplified clearance and release processes and requirements provided for in Part **3** of Chapter **23** if the truck –

- (a) did not enter the Republic on the return leg of the temporary export procedure;<sup>203</sup> and
- (b) is destined to leave the Republic without any interruption in its current use as a means of transport for goods in the ordinary course of international trade.

### **Simplified clearance and release for buses and taxis entering Republic temporarily**

**256.** Buses or taxis entering the Republic as a means of transport for travellers visiting or returning to the Republic may, despite the other provisions of this Part, be cleared and released for temporary admission in accordance with simplified clearance and release processes and requirements provided for in Part **3** of Chapter **23** if –

- (a) the bus or taxi did not enter the Republic on the return leg of the temporary export procedure;<sup>204</sup>
- (b) no international clearance arrangements referred to in Part **4** are available for the entry of the bus or taxi into the Republic; and
- (c) the bus or taxi is destined to leave the Republic without any interruption in its current use as a means of transport for travellers.

<sup>203</sup> See section **376**.

<sup>204</sup> See section **377**.

### **Simplified clearance and release for private vehicles, small vessels and light aircraft entering Republic temporarily**

**257.** Vehicles, small vessels or light aircraft entering the Republic as a private means of transport for a traveller visiting the Republic<sup>205</sup> may, despite the other provisions of this Part, be cleared and released for temporary admission in accordance with simplified clearance and release processes and requirements provided for in Part 3 of Chapter 23 if –

- (a) the vehicle, vessel or light aircraft did not enter the Republic on the return leg of the temporary export procedure;<sup>206</sup>
- (b) no international clearance arrangements referred to in Part 4 are available for the vehicle, vessel or light aircraft; and
- (b) the vehicle, vessel or light aircraft is destined to leave the Republic without any interruption in its current use as a private means of transport for that traveller.

#### ***Part 3: Export of goods under temporary admission in terms of Part 2***

### **Goods under temporary admission in terms of Part 2 to be cleared for export and exported within applicable timeframes**

**258.** (1) Goods cleared and released for temporary admission in terms of Part 2 must before the expiry of the period applicable to the goods in terms of section 254 –

- (a) be cleared for export in accordance with Chapter 15,<sup>207</sup> read with section 249(b); and
- (b) upon release for export be exported from the Republic.

(2) Subsection (1) does not apply if the goods are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances.<sup>208</sup>

### **Persons entitled to submit export clearance declarations**

**259.** Only the following persons may, subject to section 165(2), submit clearance declarations to clear for export goods under temporary admission in terms of Part 2.<sup>209</sup>

- (a) The person who originally cleared the goods in terms of Part 2 for temporary admission;<sup>210</sup>
- (b) the owner of the goods, if ownership in the goods has been transferred whilst under temporary admission and the new owner is located in the Republic;
- (c) the agent in the Republic of the owner referred to in paragraph (b), if that owner is not located in the Republic; or

<sup>205</sup> For determining when a vessel, aircraft or vehicle qualifies as a small vessel, light aircraft or vehicle used as a private means of transport, see section 870(1)(n).

<sup>206</sup> See section 378.

<sup>207</sup> See also section 346(2)(b)(ii) which states that Chapter 15 applies to goods destined for re-export under the temporary admission procedure.

<sup>208</sup> See section 125.

<sup>209</sup> See section 165(1)(a).

<sup>210</sup> For person who cleared goods, see section 166.

- (d) a customs broker referred to in section **165(1)(b)**.

### **Contents of export clearance declarations**

**260.** A clearance declaration submitted in terms of Part **2** of Chapter **15** for the export of goods under temporary admission in terms of Part **2** must, in addition to the information required in terms of sections **167** and **352**, state –

- (a) that the goods are cleared for export under the temporary admission procedure;
- (b) the number and date of the clearance declaration in terms of which the goods were cleared for temporary admission; and
- (c) the period for which the goods remained in the Republic.

### **Simplified export clearance and release for commercial trucks leaving Republic**

**261.** Trucks cleared as a means of transport for temporary admission in terms of section **255** may, despite the other provisions of this Part, be cleared and released for export under the temporary admission procedure in accordance with simplified clearance and release processes and requirements provided for in Part **3** of Chapter **23**.

### **Simplified export clearance and release for buses and taxis leaving Republic**

**262.** Buses or taxis cleared as a means of transport for temporary admission in terms of section **256** may, despite the other provisions of this Part, be cleared and released for export under the temporary admission procedure in accordance with simplified clearance and release processes and requirements provided for in Part **3** of Chapter **23**.

### **Simplified export clearance and release for private vehicles, small vessels and light aircraft leaving Republic**

**263.** Vehicles, vessels or light aircraft cleared for temporary admission in terms of section **257** as a private means of transport for a traveller visiting the Republic may, despite the other provisions of this Part, be cleared and released for export under the temporary admission procedure in accordance with simplified clearance and release processes and requirements provided for in Part **3** of Chapter **23**.

### **Proof of export of goods from Republic**

**264.** The onus to prove that goods cleared and released for temporary admission under Part **2** were loaded for export, or exported from the Republic, in accordance with the export procedure, or were exported from the Republic within the period applicable to the goods in terms of section **254**, rests on the person who cleared the goods for temporary admission.

***Part 4: Temporary admission of goods under international clearance arrangements***

**Application of this Part**

- 265.** (1) This Part –
- (a) gives effect to –
    - (i) the Convention on Temporary Admission; and
    - (ii) any agreement between the Republic and another country regulating the temporary admission of goods from that other country into the Republic in accordance with agreed customs arrangements; and
  - (b) applies to goods –
    - (i) described in the Convention or agreement and imported into the Republic; and
    - (ii) that may in terms of the Convention or agreement be cleared for temporary admission in the Republic on authority of CPD or ATA carnets which guarantee in accordance with the Convention or agreement the payment of any tax that may be or become payable on those goods.

(2) Goods to be cleared for temporary admission under this Part must be cleared in accordance with section **249(a)**, read with section **266**.

**Clearance and release of goods for temporary admission on authority of CPD and ATA carnets**

**266.** (1) Goods to which this Part applies may be cleared and released for temporary admission on authority of a CPD or ATA carnet.

(2) Goods may be cleared for temporary admission on authority of a CPD or ATA carnet only if the CPD or ATA carnet –

- (a) was issued by an issuing association;
- (b) is guaranteed by a guaranteeing association approved in terms of section **267**; and
- (c) has been accepted by the customs authority.

(3) A CPD or ATA carnet must be produced to the customs authority at the Customs Office serving the customs controlled area where the goods are to be released for temporary admission.

**Guaranteeing associations to be approved**

**267.** (1) No CPD or ATA carnet may be accepted by the customs authority unless the guaranteeing association guaranteeing the carnet –

- (a) has submitted an application to the customs authority for its approval, on a form as may be prescribed by rule; and
- (b) has been approved by the customs authority for the purposes of this Part.

(2) No guaranteeing association may be approved unless the association –

- (a) is located in the Republic; and
- (b) has given security for the payment of any tax that may become payable on any goods imported into the Republic and that are cleared for temporary admission on authority of a CPD or ATA carnet guaranteed by that guaranteeing association.

(3) The conditions subject to which an approval in terms of subsection (1) may be granted in terms of section **883** may include conditions requiring the association to assist the Commissioner in combating fraud and contravention or abuse of this Part.

#### **Formats of CPD and ATA carnets**

**268.** CPD or ATA carnets must conform to the models set out in the Convention on Temporary Admission or relevant international agreement referred to in section **265(1)(a)**.

#### **Validity period of CPD and ATA carnets**

**269.** (1) A CPD or ATA carnet remains valid for the period for which it was issued in terms of the Convention or agreement referred to in section **265(1)(a)**.

(2) If any extension is required, the goods may remain under temporary admission in the Republic only if –

- (a) a new CPD or ATA carnet is issued by an issuing association; and
- (b) that new carnet –
  - (i) is guaranteed by a guaranteeing association approved in terms of section **267**; and
  - (ii) has been accepted by the customs authority.

#### **Amendment of CPD and ATA carnets**

**270.** (1) A CPD or ATA carnet may, subject to subsection (2), be amended only by or with the approval of the guaranteeing association which guaranteed the carnet.

(2) Once a CPD or ATA carnet has been accepted by the customs authority no amendment may be made to the carnet without the approval of the customs authority.

#### **Replacement of CPD and ATA carnets**

**271.** (1) If a CPD or ATA carnet has been destroyed, lost or stolen whilst the goods to which the carnet relates are still in the Republic, the issuing association which issued the carnet may, with the approval of the customs authority,<sup>211</sup> issue a replacement carnet.

(2) A replacement CPD or ATA carnet expires on the same date as the date on which the original CPD or ATA carnet would have expired.

**Export of goods under temporary admission in terms of this Part**

**272.** (1) The person to whom a CPD or ATA carnet was issued must ensure that the goods to which the carnet relates are exported from the Republic before the expiry of the validity period applicable to the carnet.

(2) If a new CPD or ATA carnet was issued and accepted in terms of section **269**, the person to whom the new carnet was issued must ensure that the goods to which the new carnet relates are exported from the Republic before the expiry of the validity period applicable to that carnet.

**Clearance for export of goods under temporary admission in terms of this Part**

**273.** (1) Goods under the temporary admission procedure in terms of this Part must be cleared for export in accordance with section **249(b)**.

(2) Goods under the temporary admission procedure in terms of this Part may be cleared and released for export on authority of the CPD or ATA carnet issued in respect of the goods, provided the validity period applicable to the carnet has not expired.

(3) A CPD or ATA carnet must be produced to the customs authority at the Customs Office serving the place of exit where the goods are to be exported from the Republic.

(4) The onus to prove that goods under temporary admission in terms of this Part, were exported from the Republic, or were exported from the Republic within the validity period applicable to the relevant CPD or ATA carnet, rests on the person to whom the carnet on authority of which the goods were imported into Republic was issued.

**Part 5: Goods that automatically come under temporary admission procedure  
Foreign-going vessels, aircraft, locomotives and railway carriages entering the  
Republic**

<sup>211</sup> See section **883** for granting of approval subject to conditions.

**274.** (1) A vessel, aircraft, locomotive or railway carriage entering the Republic as a means of transport currently in use for the transport of goods in the ordinary course of international trade or for the transport of travellers for reward between countries, comes under the temporary admission procedure without any formal clearance or release for that procedure if the vessel, aircraft, locomotive or railway carriage –

- (a) is not re-entering the Republic on the inbound leg of the temporary export procedure;<sup>212</sup>
- (b) is destined to leave the Republic without any interruption in its current use as a means of transport for goods in the ordinary course of international trade or for the transport of travellers for reward between countries.<sup>213</sup>

(2) If the current use of a vessel, aircraft, locomotive or railway carriage that automatically came under the temporary admission procedure in terms of subsection (1) as a means of transport for goods in the ordinary course of international trade or for the transport of travellers for reward between countries, is for any reason interrupted whilst the vessel, aircraft, locomotive or railway carriage is under that procedure, the carrier operating that vessel, aircraft, locomotive or railway carriage must immediately report the matter to the customs authority, as may be prescribed by rule.

(3) Parts **2, 3** and **4** of this Chapter do not apply to vessels, aircraft, locomotives or railway carriages referred to in subsection (1).

### **Reusable transport equipment entering the Republic**

**275.** (1) Transport equipment entering the Republic as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, comes under the temporary admission procedure without any formal clearance or release for that procedure if –

- (a) that transport equipment is not re-entering the Republic on the inbound leg of the temporary export procedure;<sup>214</sup>
- (b) that transport equipment is destined to leave the Republic without any interruption in its current use as reusable transport equipment for goods in the ordinary course of international trade; and
- (c) the carrier who brought the transport equipment into the Republic or, if that carrier is not located in the Republic, that carrier's registered agent, keeps record of that transport equipment, as may be prescribed by rule.

<sup>212</sup> See section **389**.

<sup>213</sup> The arrival and departure requirements set out in Chapter **3** are not affected by this provision and those requirements must be complied with when vessels, aircraft, locomotives or railway carriages that automatically come under the temporary admission procedure enter or leave the Republic.

<sup>214</sup> See section **390**.



(2) If the current use of transport equipment that automatically came under the temporary admission procedure in terms of subsection (1) as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, is for any reason interrupted whilst the transport equipment is under that procedure, the carrier or other person responsible for the equipment must immediately report the matter to the customs authority, as may be prescribed by rule.

(3) Parts 2, 3 and 4 of this Chapter do not apply to reusable transport equipment referred to in subsection (1).

### ***Part 6: Provisions applicable to all goods under temporary admission***

#### **General provisions**

**276.** Goods under the temporary admission procedure –

- (a) may not be disposed of in the Republic –
  - (i) unless the goods are cleared and released for home use; or
  - (ii) otherwise than in accordance with section 533, in the case of damaged goods to which that section applies;
- (b) must be dealt with in accordance with this Act and any conditions that may be prescribed rule; and
- (c) may, when exported in terms of the procedure, be exported –
  - (i) through a place of exit other than the place of entry through which the goods were imported into the Republic; and
  - (ii) in one or more consignments.

#### **Goods not re-exported within applicable period regarded for tax purposes to be cleared for home use**

**277.** Goods under the temporary admission procedure must in terms of section 127(1) for tax purposes be regarded to be cleared for home use under Chapter 8<sup>215</sup> if the goods are not re-exported from the Republic within the period applicable to the goods.

### ***Part 7: Other matters***

#### **Rules to facilitate implementation of this Chapter**

**278.** Rules made in terms of section 870 to facilitate the implementation of this Chapter may include rules prescribing –

- (a) additional requirements for the clearance or release of goods for temporary

<sup>215</sup> For tax consequences if goods are regarded to be cleared for home use, see section 153; for other consequences of non-compliance with customs procedures, see section 130.

- admission;
- (b) the periods within which –
    - (i) vessels, aircraft, locomotives and railway carriages referred to in section **274** that entered the Republic under the temporary admission procedure as a means of transport must leave the Republic; and
    - (ii) transport equipment that entered the Republic under the temporary admission procedure as reusable transport equipment referred to in section **275** must leave the Republic;
  - (c) the consequences if such means of transport or transport equipment does not leave the Republic within the period prescribed in terms of paragraph (a) or extended in terms of section **875**;
  - (d) the records that must be kept of such reusable transport equipment, including records of –
    - (i) the type of transport equipment and number of each type that entered or left the Republic;
    - (ii) the places of entry or exit through which, and the dates on which, such transport equipment entered or left the Republic;
    - (iii) the movement of such transport equipment in the Republic; and
    - (iv) the persons by whom, and the period for which, such records must be kept;
  - (e) any additional requirements necessary to give effect to –
    - (i) the Convention on Temporary Admission; or
    - (ii) any agreement between the Republic and another country regulating the temporary admission of goods from that other country into the Republic;
  - (f) any additional requirements relating to goods under the temporary admission procedure;
  - (g) .....

#### **Offences in terms of this Chapter**

**279.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section **276**(a) or (b).

(2) A person clearing goods for temporary admission in terms of Part **2** is guilty of an offence if that person fails to comply with section **258**.

(3) A person to whom a CPD or ATA carnet was issued is guilty of an offence if that person fails to comply with section **272**(1) or (2).

(4) A carrier operating a vessel, aircraft, locomotive or railway carriage referred to in section 274(1) or who brought transport equipment referred to in section 275(1) into the Republic is guilty of an offence if that carrier contravenes or fails to comply with section 274(2) or 275(2).

**CHAPTER 12**  
**WAREHOUSING PROCEDURE**  
*Part 1: Introductory provisions*

**Purpose and application of this Chapter**

**280.** (1) The purpose of this Chapter is to regulate the warehousing procedure.

(2) This Chapter applies to the storage of goods not in free circulation, excluding

–

- (a) the temporary storage<sup>216</sup> of goods;
- (b) the storage of goods under a customs procedure that provides for the storage of goods under that procedure;<sup>217</sup>
- (c) the storage of goods in state warehouses or premises regarded in terms of section 569 to be state warehouses; and
- (d) the storage of goods in an industrial development zone or part of an industrial development zone designated in terms of section 45(2)(c) as a customs controlled area except when the goods are stored in a customs warehouse within an industrial development zone or such designated part of an industrial development zone.

**Warehousing procedure<sup>218</sup>**

**281.** The warehousing procedure is a customs procedure that allows goods to which this Chapter applies –

- (a) to be stored for a limited period in a specific customs warehouse; and
- (b) for the purpose of such storage to be transported to that warehouse without clearing the goods for national transit.

**Commencement and completion of warehousing procedure**

**282.** (1) Goods come under the warehousing procedure when the goods are cleared for warehousing. The warehousing procedure is, subject to subsection (2), completed when

<sup>216</sup> See definition of “temporary storage” in section 1.

<sup>217</sup> For instance the inward processing procedure (section 395) or the home use processing procedure (section 422).

<sup>218</sup> For tax status of goods under the warehousing procedure, see section 143. For consequences of non-compliance with warehousing procedure, see sections 127 and 130.

the goods are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances.

(2) The warehousing procedure, in relation to any goods, ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section 124(2).

### **Extent to which Chapters 5 and 7 apply**

**283.** Chapters 5 and 7, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter,<sup>219</sup> apply to goods under the warehousing procedure, including to the clearance and release of goods for warehousing.

### ***Part 2: Clearance and release of goods for warehousing***

#### **Warehousing of goods**

**284.** (1) No goods not in free circulation may be stored in a customs warehouse unless the goods are cleared and released for warehousing in that specific warehouse.<sup>220</sup>

(2) No goods in free circulation may be stored in a customs warehouse unless the license conditions of the warehouse allow such storage. If such storage is allowed the goods in free circulation may be stored in the warehouse without clearance for warehousing but only in accordance with the license conditions applicable to, and any rules as may be prescribed for, such goods.

- (3) No goods may be cleared or released for warehousing –
- (a) in a facility other than a customs warehouse;
  - (b) for a purpose other than a purpose referred to in section 285 or 286, as may be applicable;
  - (c) in a customs warehouse which is not licensed for the purpose for which the goods are to be warehoused; and
  - (d) unless the licensee of the customs warehouse, in the case of a public warehouse –
    - (i) has granted permission for the warehousing of the goods in that warehouse; and
    - (ii) has advised the customs authority in writing or electronically of such permission.

<sup>219</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter 5 or 7 the provision of this Chapter prevails. See sections 103(3) and 162(3).

<sup>220</sup> Goods released by the customs authority for warehousing remain in terms of section 28 subject to customs control despite such release.

(4) Goods to be cleared for warehousing must be cleared in accordance with section **283**.

#### **Purposes for which goods may be cleared for warehousing in public warehouses**

**285.** (1) Goods may be cleared for warehousing in a public warehouse for the following purposes only:

- (a) To secure and store imported goods on behalf of clients pending clearance and release of the goods for –
  - (i) home use;
  - (ii) warehousing in another warehouse; or
  - (iii) another permissible customs procedure;<sup>221</sup>
- (b) to store, consolidate and de-consolidate on behalf of clients goods destined for export from the Republic pending their clearance and release for export;
- (c) to store goods for any reason on behalf of clients to ensure that the goods remain under customs control for a specific period; or
- (d) in the case of restricted goods imported without prior compliance with legislation restricting the import or possession of the goods, to secure the goods on behalf of a client in terms of section **765(2)(a)** pending –
  - (i) compliance by the client with such legislation; or
  - (ii) export of the goods, subject to the legislation restricting the import or possession of the goods.

(2) Goods may be secured in terms of subsection (1)(a) in a public warehouse to delay the clearance and release of the goods as contemplated in that subsection –

- (a) in order to utilise the tax free status in relation to import tax conferred on warehoused goods in terms of section **143(1)**; or
- (b) for any other purpose determined by the customs authority as consistent with the warehouse procedure.

#### **Purposes for which goods may be cleared for warehousing in private warehouses**

**286.** (1) Goods may be cleared for warehousing in a private warehouse for the following purposes only:<sup>222</sup>

- (a) To secure imported goods owned by the licensee of the warehouse or in which the licensee has a material interest, pending clearance and release of the goods for –

<sup>221</sup> For instance goods warehoused for later clearance as supplies to vessels and aircraft under the stores procedure.

<sup>222</sup> It is to be noted that goods under a customs procedure that provides for the storage of goods, such as the inward processing procedure (section **395**) or the home use processing procedure (section **422**), need not be cleared for warehousing and may be stored in terms of that procedure in private storage facilities at the premises where the goods are processed other than private warehouses.

- (i) home use; or
  - (ii) a permissible customs procedure;<sup>223</sup> or
- (b) in the case of restricted goods imported by the licensee of the warehouse without prior compliance with legislation restricting the import or possession of such goods, to secure the goods in terms of section **765(2)(a)** pending –
- (i) compliance by the licensee with such legislation; or
  - (ii) export of the goods, subject to the legislation restricting the import or possession of the goods.

(2) Goods may be secured in terms of subsection (1)(a) in a private warehouse to delay the clearance and release of the goods as contemplated in that subsection –

- (a) in order to utilise the tax free status in relation to import tax conferred on warehoused goods in terms of section **143(1)**; or
- (b) for any other purpose determined by the customs authority as consistent with the warehouse procedure.

#### **Persons entitled to submit warehousing clearance declarations**

**287.** (1) Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear goods for warehousing in a public warehouse:<sup>224</sup>

- (a) the importer or exporter of the goods, if that importer or exporter is located in the Republic;
- (b) the agent of the importer or exporter of the goods, if the importer or exporter is not located in the Republic;
- (c) the owner of the goods, if ownership in the case of imported goods has been transferred after the goods were imported and that owner is located in the Republic;<sup>225</sup>
- (d) the agent in the Republic of the owner referred to in paragraph (c), if that owner is not located in the Republic; or
- (e) a customs broker referred to in section **165(1)(b)**.

(2) Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear goods for warehousing in a private warehouse:

- (a) the importer or exporter of the goods, provided that the importer or exporter is the licensee of the private warehouse; or
- (b) a customs broker referred to in section **165(1)(b)**.

<sup>223</sup> For instance goods warehoused for later clearance as supplies to vessels and aircraft under the stores procedure.

<sup>224</sup> See section **165(1)(a)**.

<sup>225</sup> See section **126**.

### **Contents of warehousing clearance declarations**

**288.** A warehousing clearance declaration must, in addition to the information required in terms of section **167**, state –

- (a) that the goods are cleared for warehousing;
- (b) the purpose for which the goods will be warehoused, taking into account section **285** or **286**;
- (c) the customs code and address of the customs warehouse where the goods will be warehoused; and
- (d) that the customs warehouse where the goods will be warehoused is licensed for the purpose for which the goods are to be warehoused.

### **Redirection of goods**

**289.** Goods that are cleared and released for warehousing must be delivered to the customs warehouse indicated in the clearance declaration, and no person may, without the permission of the customs authority, redirect goods that are cleared for warehousing to any place other than that customs warehouse.

## ***Part 3: Warehousing of goods in customs warehouses***

### **Maximum warehousing periods**

**290.** (1) Goods other than goods referred to in subsection (3) may not be warehoused in a public or private warehouse for longer than two years from the date the goods are for the first time cleared for warehousing.

(2) The period referred to in subsection (1) may not be extended in terms of section **875** for longer than 180 calendar days.

(3) If subsection (1) is contravened in respect of warehoused goods, the goods must in terms of section **127(1)** for tax purposes be regarded to be cleared for home use under Chapter **8**.<sup>226</sup>

(4) Restricted goods imported into the Republic and warehoused in a customs warehouse in terms of section **765(2)(a)** pending compliance with the legislation restricting the import or possession of such goods, may not be warehoused in a public or private warehouse for longer than a period as may be prescribed by rule.

### **Warehousing of dangerous or hazardous goods**

<sup>226</sup> For tax consequences if goods are regarded to be cleared for home use, see section **153**.

**291.** Dangerous or hazardous goods –

- (a) may be warehoused in a customs warehouse only in accordance with any applicable legislation and requirements; and
- (b) must immediately be removed from a warehouse to another place if the customs authority in the public interest so directs.

**Records to be kept of warehoused goods**

**292.** The licensee of a customs warehouse must keep record of all goods in the warehouse in a manner and format and containing the information as may be prescribed by rule,<sup>227</sup> including information concerning –

- (a) all goods received in the warehouse, and the date of receipt;
- (b) the purpose for which, and, in the case of a public warehouse, the person on whose behalf, the goods are warehoused;
- (c) all goods removed from the warehouse, and the date of removal;
- (d) the person by whom the goods were removed; and
- (e) whether the goods were removed –
  - (i) in terms of a clearance for home use or a customs procedure, and if for a customs procedure the specific customs procedure under which the goods were removed; or
  - (ii) for any other purpose, taking into account section **295**.

**Reports to be submitted in connection with warehoused goods**

**293.** (1) The licensee of a customs warehouse must, within a period after the end of each month as may be prescribed by rule, submit to the customs authority a report in connection with all goods stored in, or removed from, the warehouse during that month.

(2) A report in terms of subsection (1) must contain such information as may be prescribed by rule, including information concerning –

- (a) the goods received in the warehouse during the reporting period;
- (b) any surpluses or shortfalls on goods in the warehouse, as at the end of the reporting period;
- (c) any goods in the warehouse damaged, destroyed, lost or unaccounted for, as at the end of the reporting period; and
- (d) all goods removed from the warehouse during the reporting period.

**Sorting, packing, etc of goods warehoused in customs warehouses**

<sup>227</sup> See section **853** for computerised record keeping systems.



**294.** Goods warehoused in a customs warehouse may be sorted, separated, graded, packed, repacked, labelled or relabelled only with the permission of the customs authority or otherwise dealt with as may be prescribed by rule.

#### **Removal of goods from customs warehouses**

**295.** Warehoused goods may be removed from a customs warehouse in the following circumstances only:

- (a) When the goods are cleared and released for home use, warehousing in another warehouse or another customs procedure;
- (b) for carrying out repair or preservation operations in connection with the goods, provided that the goods are returned to the warehouse within a period as may be prescribed by rule or determined by the customs authority in a specific case;
- (c) for any other purpose as may be prescribed by rule or as the customs authority may approve in a specific case, provided that the goods are within a period as may be prescribed by rule or determined by the customs authority in a specific case –
  - (i) returned to the warehouse; or
  - (ii) cleared and released as contemplated in paragraph (a);
- (d) if any steps referred to in section **130** are taken in respect of the goods and such steps require removal of the goods from the warehouse; or
- (e) if the goods are detained, seized or confiscated and the customs authority directs in terms of Chapter **33**, **34** or **35** that the goods be removed to another place.

#### **Removal of restricted goods stored in customs warehouses pending compliance with legislation restricting import or possession**

**296.** (1) Restricted goods imported into the Republic and warehoused in a customs warehouse in terms of section **765(2)(a)** pending compliance with the legislation restricting the import or possession of such goods, may not be removed from the warehouse unless proof of compliance with that legislation is submitted to the customs authority.

(2) If such proof of compliance is not submitted to the customs authority within the period applicable to the goods in terms of section **290(4)**, section **766(1)** and the other provisions of Chapter **34** become applicable.

### ***Part 4: Other matters***

#### **Notification of closure of public warehouse**

**297.** Before closing a public warehouse in terms of section **649**, the Commissioner must give every person who has deposited goods in that warehouse 30 calendar days written notice of the closure of the warehouse.

### **Rules to facilitate implementation of this Chapter**

**298.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) the format and contents of applications for permissions in terms of section **284**;
- (b) the format of record-keeping, the manner in which records must be kept and the information of which record must be kept for purposes of this Chapter;
- (c) measures to distinguish warehoused goods from goods in free circulation in a warehouse and to guard against the diversion for home use of warehoused goods;

### **Offences in terms of this Chapter**

**299.** (1) A person is guilty of an offence if that person contravenes section **289**, **295**, or **296(1)**.

(2) A person clearing goods for warehousing is guilty of an offence –

- (a) if that person contravenes section **285(1)** or **286(1)**;
- (b) if that person fails to comply with a direction in terms of section **291(b)**; or
- (c) if section **290(1)** or (4) is contravened with respect to those goods.

(3) The licensee of a customs warehouse is guilty of an offence –

- (a) if that licensee contravenes or fails to comply with section **292**, **293(1)**, or **294**; or
- (b) if section **284(1)** or (2) is contravened with respect to goods stored in that warehouse.

(4) A contravention of section **289** or **296(1)** is a Category 1 offence.

## **CHAPTER 13**

### **TAX FREE SHOP PROCEDURE**

#### ***Part 1: Introductory provisions***

#### **Purpose and application of this Chapter**

**300.** (1) The purpose of this Chapter is to regulate the tax free shop procedure.

(2) This Chapter applies to all goods supplied to or received in a tax free shop for sale in or from that shop.

#### **Tax free shop procedure<sup>228</sup>**

<sup>228</sup> For tax status of goods under the tax free shop procedure, see section **144**. For consequences of non-compliance with the tax free shop procedure, see sections **127**, **128**, **129** and **130**.

- 301.** The tax free shop procedure is a customs procedure that allows –
- (a) goods whether in free circulation or not in free circulation to be sold tax free in retail quantities on premises situated within a sea, air or rail travellers terminal or land border-post and licensed as a tax free shop to persons entering or leaving the Republic;
  - (b) goods not in free circulation supplied to a tax free shop for the purpose of such sale to be transported to the shop without clearing the goods for national transit; and
  - (c) the goods so sold to be treated as accompanied or unaccompanied baggage of such persons.

### **Commencement and completion of tax free shop procedure**

**302.** (1) Goods not in free circulation come under the tax free shop procedure when the goods are cleared for supply to a tax free shop in accordance with Part 2, and goods in free circulation automatically come under the tax free shop procedure when the goods are received in a tax free shop in accordance with Part 3. The tax free shop procedure is, subject to subsection (2), completed when the goods are sold from the shop and –

- (a) if sold to a person in the process of leaving the Republic, exported from the Republic; or
- (b) if sold to a person having entered the Republic, declared in terms of section 465(1)(b) to the customs authority.

(2) The tax free shop procedure, in relation to any goods, ends before its completion if –

- (a) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
- (b) completion of the procedure is interrupted by an occurrence referred to in section 124(2).

### **Extent to which Chapters 5 and 7 apply**

**303.** Chapters 5 and 7, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter,<sup>229</sup> apply to goods under the tax free shop procedure, including to the clearance and release of goods for the tax free shop procedure.

## ***Part 2: Clearance and release of goods not in free circulation for supply to tax free shops***

### **Clearance and release of goods for tax free shop procedure**

<sup>229</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter 5 or 7 the provision of this Chapter prevails. See sections 103(3) and 162(3).

**304.** (1) Goods not in free circulation may not be received in a tax free shop unless those goods are cleared and released under the tax free shop procedure for supply to that tax free shop.<sup>230</sup>

(2) Goods not in free circulation to be cleared for supply to a tax free shop must be cleared in accordance with section **303**.

#### **Persons entitled to submit tax free shop clearance declarations**

**305.** Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear goods for supply to a tax free shop:<sup>231</sup>

- (a) the licensee of the tax free shop; or
- (b) a customs broker referred to in section **165(1)(b)**.

#### **Contents of tax free shop clearance declarations**

**306.** A tax free shop clearance declaration must, in addition to the information required in terms of section **167**, state –

- (a) that the goods are cleared under the tax free shop procedure for supply to a tax free shop;
- (b) the customs code of that tax free shop; and
- (c) the name of the licensee of the shop.

#### **Redirection of goods**

**307.** Goods that are cleared and released for supply to a tax free shop must be delivered to the tax free shop indicated in the clearance declaration, and no person may, without the permission of the customs authority, redirect goods that are cleared for supply to a tax free shop to any place other than that tax free shop.

### ***Part 3: Receipt, sale and removal of goods in tax free shops***

#### **Goods that may be sold in tax free shops**

**308.** (1) Any goods as may be prescribed by rule may be kept, displayed for sale or sold in a tax free shop, provided that Part **2** is complied with in relation to the supply of goods not in free circulation to a tax free shop.

(2) No restricted or sectorally controlled goods may be sold in a tax free shop except in accordance with the legislation regulating the import, possession or export of the goods.

<sup>230</sup> Goods not in free circulation which have been released by the customs authority for supply to a tax free shop remain in terms of section **28** subject to customs control despite such release.

<sup>231</sup> See section **165(1)(a)**.

**Persons to whom goods may be sold in tax free shops<sup>232</sup>**

**309.** Goods may be sold in a tax free shop only to –

- (a) travellers and crew –
  - (i) about to depart from the sea, air or rail travellers terminal or land border-post where the tax free shop is situated on board a foreign-going vessel or aircraft, cross-border railway carriage or vehicle to a destination outside the Republic; and
  - (ii) holding valid boarding passes or other documents indicating that they are about to undertake the voyage to such destination, as may be prescribed by rule;<sup>233</sup> or
- (b) travellers and crew –
  - (i) having arrived at the sea, air or rail travellers terminal or land border-post where the tax free shop is situated on board a foreign-going vessel or aircraft, cross-border train or vehicle from a place outside the Republic; and
  - (ii) holding valid boarding passes or other documents indicating that they arrived at that terminal or land border-post from a place outside the Republic, as may be prescribed by rule.

**Issuing of sales invoices**

**310.** No goods may be sold from a tax free shop unless a sales invoice containing such information as may be prescribed by rule has been issued to the purchaser in respect of the sale.

**Off-site outlets**

**311.** (1) The licensee of a tax free shop may, with the approval of the customs authority, for the purpose of promoting sales establish retail outlets for the tax free shop in other locations outside the sea, air or rail travellers terminal or land border-post in which the shop is situated and transfer goods in the shop to such outlets for display purposes, provided that –

- (a) the customs authority may limit the number of off-site outlets that a tax free shop may establish;
- (b) the outlet is only used for the purpose of taking orders;

<sup>232</sup> Rules under section 6 regulate the sale of goods to BLNS travelers.

<sup>233</sup> Goods sold in a tax free shop to persons referred to in section 309 are accompanied or unaccompanied baggage to which Chapter 20 applies. Chapter 15 regulating the clearance of goods for export from the Republic does not apply to such baggage which persons have with them when leaving the Republic. See section 346(3).

- (c) the delivery or pick-up of goods ordered from an off-site outlet may only take place at the tax free shop;
- (d) the outlet is located within the area served by the same Customs Office as the tax free shop;
- (e) the outlet is secure and meets the standards as may be prescribed by rule;
- (f) the transfer of goods for display purposes between the tax free shop and the outlet takes place in accordance with such processes and requirements as may be prescribed by rule; and
- (g) the liability for the payment of any tax on goods in the tax free shop and in the outlet remain with the licensee of the tax free shop.

(2) Goods transferred for display purposes in terms of subsection (1)(f) must be regarded as forming part of the goods in the tax free shop.

### **Maximum period for which goods may remain in tax free shops**

**312.** No goods supplied to a tax free shop for sale in the shop may, subject to section **875**, remain in the shop for longer than one year from the date of receipt of the goods in the shop, or in the case of goods cleared in terms of Part **2**, from the date of clearance of the goods.<sup>234</sup>

### **Removal of goods from tax free shops**

**313.** (1) Goods may be removed from a tax free shop in the following circumstances only:

- (a) When the goods are sold to a traveller or crew member referred to in section **309**;
- (b) if goods not sold as contemplated in paragraph (a) are cleared and released for home use or another customs procedure, as may be permissible in the circumstances;
- (c) if the goods are to be transferred –
  - (i) to another tax free shop covered by the same tax free shop license; or
  - (ii) to an off-site outlet established in terms of section **310** for that tax free shop;
- (d) if any steps referred to in section **130** are taken in respect of the goods and such steps require removal of the goods from the tax free shop;
- (e) if the goods are detained, seized or confiscated and the customs authority directs in terms of Chapter **33**, **34** or **35** that the goods be removed to another place; or
- (f) any other circumstance as may be prescribed by rule or approved by the customs authority in a specific case.

<sup>234</sup> For time of clearance of goods, see section **173**.

(2) Goods removed from a tax free shop in contravention of subsection (1) or used or sold as samples, perfume testers or other items used for promoting sales in the shop must in terms of –

- (a) section **127**(1) for tax purposes be regarded to be cleared for home use under Chapter **8**,<sup>235</sup> in the case of goods cleared for the tax free shop procedure in terms of Part **2**; or
- (b) section **128**(1) for tax purposes be regarded to have reverted to free circulation,<sup>236</sup> in the case of goods that were in free circulation when supplied to the shop.

### **Manipulation, alteration or combination of goods in tax free shops**

**314.** No goods in a tax free shop may for the purpose of display or sale be manipulated, altered or combined with another article to form a new or different product except as provided by rule.

### ***Part 4: Accountability for goods in tax free shops***

#### **Inventory control of goods in tax free shops**

**315.** The licensee of a tax free shop must establish and maintain an inventory control system<sup>237</sup> complying with any requirements as may be prescribed by rule or approved by the customs authority in a specific case to reflect –

- (a) the weekly, monthly and annual quantities of goods –
  - (i) received in the tax free shop, distinguishing between –
    - (aa) goods that are cleared and released for supply to the shop in terms of Part **2**; and
    - (bb) goods that were in free circulation for which no clearance and release were necessary;
  - (ii) sold from the tax free shop; and
  - (iii) removed from the tax free shop for each of the purposes listed in section **313**;
- (b) the date of receipt of the goods in the tax free shop, the date of sale (if any) and the date of removal;
- (c) monthly and year-end balances of all unsold goods in the tax free shop;
- (d) any goods to which section **127** or **128** was applied; and
- (e) any other matter as may be prescribed by rule.

#### **Monthly returns**

<sup>235</sup> For tax consequences if goods are regarded to be cleared for home use, see section **153**; for other consequences of non-compliance with customs procedures, see sections **130**.

<sup>236</sup> For tax consequences if goods are regarded as having reverted to free circulation, see section **160**; for other consequences of non-compliance with customs procedures, see sections **130**.

<sup>237</sup> See section **884** for computerized systems.

**316.** The licensee of a tax free shop must submit to the customs authority monthly returns reflecting –

- (a) all goods received in the tax free shop during the previous month, distinguishing between –
  - (i) goods that are cleared and released for supply to the shop in terms of Part 2;  
and
  - (ii) goods that were in free circulation for which no clearance and release were necessary;
- (b) any non-sellable goods received in or that have become non-sellable whilst in the tax free shop during the previous month;
- (c) all goods sold from the tax free shop during the previous month;
- (d) all goods removed from the tax free shop during the previous month for each of the purposes listed in section 313;
- (e) any goods damaged, destroyed, lost or unaccounted for during the previous month;  
and
- (f) any other matter as may be prescribed by rule.

#### ***Part 5: Other matters***

##### **Rules to facilitate implementation of this Chapter**

**317.** Rules made in terms of section 870 to facilitate the implementation of this Chapter may include rules prescribing –

- (a) requirements for inbound and outbound tax free shops and combination inbound and outbound tax free shops;
- (b) conditions and procedures for the sale of goods tax free to diplomats representing other countries in the Republic in special shops for diplomats;
- (c) limits on the number of special shops for diplomats;
- (d) the application of provisions of this Chapter to special shops for diplomats;
- (e) .....

##### **Offences in terms of this Chapter**

**318.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section 307.

- (2) The licensee of a tax free shop is guilty of an offence –
  - (a) if that licensee fails to comply with section 315 or 316;
  - (b) if goods are received in the shop in contravention of section 304(1);
  - (c) if section 308(2), 309, 310, 312, 313(1) or 314 is contravened with respect to goods in the shop; or



(d) if the licensee establishes or operates a retail outlet for the tax free shop otherwise than in accordance with section **311**.

(3) The offences referred to in subsections (1) and (2)(b) are Category 1 offences.

## CHAPTER 14 STORES PROCEDURE

### *Part 1: Introductory provisions*

#### **Purpose and application of this Chapter**

**319.** (1) The purpose of this Chapter is to regulate the stores procedure.

(2) This Chapter applies to goods that are to be or are used as stores for foreign-going vessels, foreign-going aircraft or cross-border trains –

(a) operated by a licensed carrier located in the Republic or, if not located in the Republic, represented in the Republic by a registered agent; and

(b) engaged in the transport of goods or travellers –

(i) to the Republic from a place outside the Republic; or

(ii) from the Republic to a place outside the Republic.

(3) Goods that are to be or are used as stores for other foreign-going vessels, foreign-going aircraft or cross-border trains or for vehicles entering or leaving the Republic, must be treated as goods ordinarily imported into or to be exported from the Republic.<sup>238</sup>

#### **Stores procedure**<sup>239</sup>

**320.** The stores procedure is a customs procedure that allows stores for a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section **319(2)** –

(a) in the case of stores on board the vessel, aircraft or train when it enters the Republic –

(i) to be used as stores on that vessel, aircraft or train in the Republic without clearing those stores for home use;<sup>240</sup> or

(ii) to be re-exported from the Republic on board that vessel, aircraft or train as stores for that vessel, aircraft or train without clearing those stores for export;<sup>241</sup>

<sup>238</sup> This means that sections **104** and **108** must be applied to these goods.

<sup>239</sup> For tax status of goods under the stores procedure, see section **145**.

<sup>240</sup> Such goods are in terms of section **106** excluded from import clearance requirements.

<sup>241</sup> Such goods are in terms of section **110** excluded from export clearance requirements.

- (b) in the case of stores taken on board the vessel, aircraft or train in the Republic –
  - (i) to be transported to that vessel, aircraft or train under this procedure without clearing those stores for national transit, if those stores consist of imported goods;
  - (ii) to be used as stores on that vessel, aircraft or train in the Republic without clearing those stores for home use, if those stores consist of imported goods; or
  - (iii) to be exported from the Republic on board that vessel, aircraft or train as stores for that vessel, aircraft or train without clearing those stores for export.<sup>242</sup>

### **Commencement and completion of stores procedure**

**321.** (1) (a) Stores for a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section 319(2) that are on board the vessel, aircraft or train when it enters the Republic, come under the stores procedure automatically and without any formal clearance for the stores procedure when the vessel, aircraft or train enters the Republic.

(b) Stores taken on board such a vessel, aircraft or train in the Republic, come under the stores procedure when the stores are cleared in terms of Part 2 as stores for that vessel, aircraft or train.

(c) The stores procedure in relation to any goods is, subject to subsection (2), completed when the goods leave the Republic on board that vessel, aircraft or train as stores for the vessel, aircraft or train.

- (2) The stores procedure, in relation to any goods, ends before its completion if –
- (a) the goods are used in accordance with this Chapter as stores on that vessel, aircraft or train whilst in the Republic;
  - (b) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
  - (c) completion of the procedure is interrupted by an occurrence referred to in section 124(2).

### **Extent to which Chapters 5 and 7 apply**

**322.** Chapters 5 and 7, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter,<sup>243</sup> apply to goods under the stores procedure, including to the clearance and release of goods for the stores procedure.

<sup>242</sup> Chapter 15 regulating the clearance of goods for export from the Republic does not apply to the export from the Republic of goods cleared and released for the stores procedure. See section 346(3).

<sup>243</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in

***Part 2: Clearance and release of stores taken on board in Republic***

**Application of this Part**

**323.** This Part applies to stores for a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section **319(2)** taken on board the vessel, aircraft or train in the Republic, excluding stores for such a vessel, aircraft or train taken on board the vessel, aircraft or train in the Republic in terms of a clearance and release for export.

**Stores taken on board first to be cleared and released for stores procedure**

**324.** (1) No stores to which this Part applies may be taken on board a foreign-going vessel or aircraft or cross-border train unless the stores are cleared and released under the stores procedure as stores for that vessel, aircraft or train.

(2) Goods to be cleared under the stores procedure as stores for a foreign-going vessel or aircraft or a cross-border train must be cleared in accordance with section **322**.

**Persons entitled to submit stores clearance declarations**

**325.** Only the following persons<sup>244</sup> may, subject to section **165(2)**, submit clearance declarations to clear goods under the stores procedure as stores for foreign-going vessels or aircraft or cross-border trains:

- (a) the carrier operating the vessel, aircraft or train, if the carrier is located in the Republic;
- (b) the agent in the Republic of the carrier, if the carrier is not located in the Republic;
- (c) a stores supplier; or
- (d) a customs broker referred to in section **165(1)(b)**.

**Contents of stores clearance declarations**

**326.** A stores clearance declaration must, in addition to the information required in terms of section **167**, state –

- (a) that the goods are stores cleared for the stores procedure; and
- (b) particulars of –
  - (i) the vessel, aircraft or train for which the stores are needed;
  - (ii) the voyage schedule of the vessel, aircraft or train and expected duration of the voyage, if this information has not already been submitted to the customs authority; and

Chapter **5** or **7**, the provision of this Chapter prevails. See sections **103(3)** and **162(3)**.  
<sup>244</sup> See section **165(1)(a)**.

- (iii) the quantity of unused stores of the kind in question on board the vessel, aircraft or train at the time of submission of the stores clearance declaration, if this information has not already been submitted to customs authorities.

**Release to be given only for quantities of stores actually needed for voyage**

**327.** (1) The customs authority may, after consulting the carrier operating a foreign-going vessel or aircraft or cross-border train or the on-board operator of the vessel, aircraft or train, determine the quantity of goods reasonably needed to be taken on board the vessel, aircraft or train as stores for any intended voyage, taking into account all relevant factors including –

- (a) the quantities needed for the provision of on board services;
- (b) the functional needs of the vessel, aircraft or train;
- (c) the operational needs of the vessel, aircraft or train;
- (d) the length and duration of the voyage;
- (e) the number of travellers and crew on board;
- (f) the needs of travellers and crew; and
- (g) the amount of unused stores on board the vessel, aircraft or train at the time of submission of the stores clearance declaration.

(2) Release may be given in terms of section **324** only for quantities as determined by the customs authority in terms of subsection (1).

**Acknowledgement of receipt of stores taken on board**

**328.** The on-board operator of a foreign-going vessel or aircraft or a cross-border train must in respect of all stores taken on board the vessel, aircraft or train in the Republic issue a receipt containing the information as may be prescribed by rule.

**Taking of prohibited, restricted and sectorally controlled goods on board vessels, aircraft and trains as stores**

**329.** (1) No prohibited goods may be taken on board a foreign-going vessel or aircraft or a cross-border train as stores for that vessel, aircraft or train.

(2) (a) Restricted goods may be taken on board a foreign-going vessel or aircraft or a cross-border train as stores for that vessel, aircraft or train only in accordance with Chapter **34** and the legislation referred to in section **764** restricting the possession or export of those goods.

(b) Sectorally controlled goods may be taken on board a foreign-going vessel or aircraft or a cross-border train as stores for that vessel, aircraft or train only in

accordance with Chapter **34** and the legislation referred to in section **773** applicable to the goods.

### ***Part 3: Reporting and control of stores under stores procedure***

#### **Application of this Part**

**330.** This Part applies to all stores under the stores procedure, whether the stores came under the stores procedure in terms of section **321(1)(a)** or in terms of a clearance for the stores procedure under Part **2**.

#### **Stores arrival reports**

**331.** (1) All stores that are under the stores procedure on board –

- (a) a foreign-going vessel or aircraft when the vessel or aircraft arrives at a customs seaport or airport, including stores in the personal possession of a crew member, must be reported to the customs authority; or
- (b) a cross-border train when the train arrives at a railway station as may be prescribed by rule, including stores in the personal possession of a crew member, must be reported to the customs authority.<sup>245</sup>

(2) A stores arrival report referred to in subsection (1) must be submitted to the customs authority together with or as part of the arrival report that must be submitted in respect of –

- (a) the vessel in terms of section **53** when the vessel arrives at a customs seaport;
- (b) the aircraft in terms of section **59** when the aircraft arrives at a customs airport; or
- (c) the train in terms of section **64** when the train after entering the Republic arrives at a railway station as may be prescribed by rule.

#### **Sealing or securing of stores**

**332.** (1) When a foreign-going vessel or aircraft or a cross-border train arrives at a seaport, airport or railway station where a stores arrival report must be submitted in terms of section **331**, a customs officer may seal or otherwise secure on board the vessel, aircraft or train any stores that are under the stores procedure, including any stores in the personal possession of a crew member on board the vessel, aircraft or train.

(2) Subsection (1) does not apply to stores in the personal possession of a crew member on board a vessel, insofar as the quantity of those stores does not exceed a

<sup>245</sup> All stores on board foreign-going vessels, foreign-going aircrafts or cross-border trains are in terms of section **28** subject to customs control whilst that vessel, aircraft or train is in the Republic. Unreported stores are subject to seizure in terms of section **743**.

quantity as may be prescribed by rule for the personal use of crew members on board vessels whilst in the Republic.

(3) No person may, without the permission of the customs authority, break any seal placed in terms of subsection (1) on stores or interfere with stores otherwise secured in terms of that subsection before the vessel or aircraft has departed from the seaport, airport or railway station where the goods were sealed or secured and all physical contact with that seaport, airport or railway station has ceased.

(4) The on-board operator of a vessel, aircraft or train is responsible for ensuring that –

- (a) no seal is broken or any stores otherwise secured are interfered with in contravention of subsection (3); or
- (b) stores sealed or otherwise secured are not used or dealt with in any unauthorised way.

#### **Issue of stores for use on foreign-going vessels whilst in customs seaports**

**333.** (1) The customs authority may give permission to the on-board operator of a foreign-going vessel to issue stores that are under the stores procedure, for use by travellers and crew on the vessel during its stay at a customs seaport, in such quantities as are reasonably required taking into account all relevant factors, including –

- (a) the number of travellers and crew on board; and
- (b) the length of time the vessel will stay in that seaport.

**(2)** The customs authority may give permission to the on-board operator of a foreign-going vessel to issue additional quantities of stores –

- (a) for use on the vessel during its stay at a customs seaport –
  - (i) if departure of the vessel is delayed; or
  - (ii) if the vessel is to remain in the customs seaport for longer than a period as may be prescribed by rule; or
- (b) for the purpose of a function on the vessel during its stay at that seaport.

(3) Alcohol and tobacco products issued from the vessel's stores in terms of subsection (1) or (2) for use on the vessel by travellers and crew may not exceed the standard quantities prescribed by rule.

(4) The on-board operator of a foreign-going vessel must keep record of all stores issued in terms of this section for use on the vessel at a customs seaport, in a manner as may be prescribed by rule.

#### **Tax free items for sale on board to travellers and crew**

**334.** Stores under the stores procedure on board a foreign-going vessel or aircraft or a cross-border train as items for sale on the vessel, aircraft or train to travellers and crew, have a tax free status in relation to import tax, domestic tax and export tax when sold to travellers and crew but only if the vessel, aircraft or train falls within a category of vessels, aircraft or trains permitted by rule to carry tax-free items for sale to travellers and crew.<sup>246</sup>

#### **Removal of stores from foreign-going vessels or aircraft or cross-border trains**

**335.** (1) Stores under the stores procedure may not be removed from a foreign-going vessel or aircraft or a cross-border train –

- (a) unless the goods –
  - (i) are cleared and released for another permissible customs procedure or, subject to subsection (2), for supply as stores to another foreign-going vessel or aircraft or a cross-border train;
  - (ii) are cleared and released for home use, in the case of goods that were on board the vessel, aircraft or train when the vessel, aircraft or train entered the Republic or that were not in free circulation when cleared in terms of Part 2 as stores for the vessel, aircraft or train; or
  - (iii) revert to free circulation in terms of section 338(b), in the case of goods that were in free circulation when cleared in terms of Part 2 as stores for the vessel, aircraft or train; or
- (b) except for –
  - (i) securing the goods in accordance with section 336;
  - (ii) repairing any damaged goods;
  - (iii) disposal as waste under supervision of the customs authority; or
  - (iv) another purpose approved by the customs authority.

(2) Stores under the stores procedure on board a foreign-going vessel or aircraft may be cleared for transshipment or international transit in terms of subsection (1)(a)(i) only –

- (a) to a foreign-going vessel or aircraft operated by a carrier and engaged in the transport of goods or travellers to the Republic from a place outside the Republic or from the Republic to a place outside the Republic, as stores for that vessel or aircraft; and

<sup>246</sup> See section 145 for tax status of goods under the stores procedure.

(b) in quantities determined by the customs authority in accordance with section **327**.

(3) No clearance or release in terms of Part **2** is needed when stores are returned to the vessel, aircraft or train from which those goods were removed in terms of subsection (1)(b)(i), (ii) or (iv).

#### **Securing of stores by removal from vessels or aircraft**

**336.** The customs authority may direct or allow that any stores under the stores procedure on board a foreign-going vessel or aircraft be removed from the vessel or aircraft for storage elsewhere until the vessel or aircraft is ready to depart, if –

- (a) the vessel or aircraft for any reason is to remain at a specific location for a period longer than scheduled; and
- (b) such storage is necessary to ensure that those stores are not dealt with in any unauthorised way.

#### **Stores in possession of crew members**

**337.** Stores under the stores procedure in the possession of a crew member of a foreign-going vessel or aircraft or cross-border train may not be sold, otherwise traded or taken off the vessel, aircraft or train without the permission<sup>247</sup> of the customs authority.

#### **Unused stores on board foreign-going vessels or aircraft no longer bound for foreign destinations**

**338.** If a foreign-going vessel or aircraft or a cross-border train is no longer bound for a destination outside the Republic, any unused stores on board the vessel, aircraft or train under the stores procedure –

- (a) must be cleared and released for another customs procedure or for home use if permissible in the circumstances, in the case of stores that were on board the vessel, aircraft or train when the vessel, aircraft or train entered the Republic or that were not in free circulation when cleared in terms of Part **2** as stores for the vessel, aircraft or train; or
- (b) revert to free circulation, in the case of stores that were in free circulation when cleared in terms of Part **2** as stores for the vessel, aircraft or train.<sup>248</sup>

#### **Stores departure reports**

**339.** (1) All stores that are under the stores procedure on board –

<sup>247</sup> See section **883** for granting of permissions on conditions.

<sup>248</sup> If these goods revert to free circulation the clearance for the stores procedure must be withdrawn and section **160** becomes applicable to the goods.



- (a) a foreign-going vessel or aircraft when the vessel or aircraft departs from a customs seaport or airport, including stores in the personal possession of a crew member, must be reported to the customs authority; or
- (b) a cross-border train when the train departs from a railway station referred to in section **331(1)(b)**, including stores in the personal possession of a crew member, must be reported to the customs authority.

(2) A stores departure report referred to in subsection (1) must be submitted to the customs authority together with or as part of the departure report that must be submitted in respect of –

- (a) the vessel in terms of section **56** when the vessel departs from a customs seaport;
- (b) the aircraft in terms of section **62** when the aircraft departs from a customs airport; or
- (c) the train in terms of section **66** when the train departs from a railway station as may be prescribed by rule.

#### **Submission of stores reports in terms of this Chapter**

**340.** (1) A stores arrival or departure report must –

- (a) be on a form as may be prescribed by rule and contain the information required on the prescribed form;
- (b) be accompanied or supported by any documents as may be prescribed by rule; and
- (c) be submitted electronically in accordance with section **879** by the carrier operating the vessel, aircraft or train.

(2) Subsection (1) must, in the case of a carrier who is not located in the Republic,<sup>249</sup> be complied with either by the carrier or that carrier's registered agent in the Republic.

#### **Aborted voyages<sup>250</sup>**

**341.** (1) If after having left the Republic for a destination outside the Republic, a foreign-going vessel or aircraft referred to in section **319(2)** returns to the Republic, stores that were on board the vessel or aircraft under the stores procedure must be dealt with as follows:

- (a) Stores that were on board the vessel or aircraft when the vessel or aircraft entered the Republic or that were not in free circulation when cleared in terms of Part **2** as

<sup>249</sup> See section **1(3)(a)**.

<sup>250</sup> Section **338** applies if a vessel is no longer bound for a destination outside the Republic.

stores for that vessel or aircraft, must for tax purposes be regarded to be cleared for home use under Chapter 8<sup>251</sup> to the extent that those stores –

- (i) if the vessel or aircraft returned to the Republic due to unavoidable circumstances –
    - (aa) were used or purportedly used during the aborted voyage in excess of a quantity which could reasonably have been used on the vessel or aircraft taking into account the duration and circumstances of the aborted voyage; or
    - (bb) are lost or unaccounted for; or
  - (ii) if the vessel or aircraft returned to the Republic due to avoidable circumstances –
    - (aa) were used or purportedly used during the aborted voyage; or
    - (bb) are lost or unaccounted for.
- (b) Stores that were in free circulation when cleared in terms of Part 3 as stores for that vessel or aircraft, must for tax purposes be regarded as having reverted to free circulation<sup>252</sup> to the extent that those stores –
- (i) if the vessel or aircraft returned to the Republic due to unavoidable circumstances –
    - (aa) were used or purportedly used during the aborted voyage in excess of a quantity which could reasonably have been used on the vessel or aircraft taking into account the duration and circumstances of the aborted voyage; or
    - (bb) are lost or unaccounted for; or
  - (ii) if the vessel or aircraft returned to the Republic due to avoidable circumstances –
    - (aa) were used or purportedly used during the aborted voyage; or
    - (bb) are lost or unaccounted for.

#### ***Part 4: Other matters***

#### **Additional grounds for regarding stores under stores procedure to be cleared for home use<sup>253</sup>**

**342.** Goods that came under the stores procedure when a foreign-going vessel or aircraft or a cross-border train referred to in section 319(2) entered the Republic and goods that were not in free circulation when cleared in terms of Part 2 for supply as stores to such a

<sup>251</sup> For tax consequences if goods are regarded to be cleared for home use, see section 153.

<sup>252</sup> For tax consequences if goods are regarded as having reverted to free circulation, see section 160.

<sup>253</sup> See section 127 for general grounds on which goods under a customs procedure must or may be regarded to be cleared for home use.

vessel, aircraft or train, must in terms of section **127** for tax purposes be regarded to be cleared for home use under Chapter **8**<sup>254</sup> –

- (a) insofar as those goods are used by –
  - (i) travellers and crew members travelling on board such a vessel, aircraft or train only between places within the Republic;
  - (ii) persons performing duties on board such a vessel, aircraft or train only whilst the vessel, aircraft or train is in a customs seaport or airport or a railway terminal; or
  - (iii) guests on board such a vessel whilst in a customs seaport;
- (b) insofar as those goods are not used as stores for the vessel, aircraft or train; or
- (c) if a seal placed on the goods in terms of section **332** is broken or if the goods otherwise secured in terms of that section are interfered with in any unauthorised way.

**Additional grounds for regarding stores under stores procedure to have reverted to free circulation**<sup>255</sup>

**343.** Goods that were in free circulation when cleared in terms of Part **2** for supply as stores to a foreign-going vessel or aircraft or cross-border train referred to in section **319(2)**, must in terms of section **128** for tax purposes be regarded to have reverted to free circulation<sup>256</sup> insofar as the goods are used by –

- (a) travellers and crew members travelling on board such a vessel, aircraft or train only between places within the Republic;
- (b) persons performing duties on board such a vessel, aircraft or train only whilst the vessel, aircraft or train is in a customs seaport or airport or a railway terminal; or
- (c) guests on board such a vessel whilst in a customs seaport.

**Rules to facilitate implementation of this Chapter**

**344.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) regulating the issue in terms of section **333** of stores on board foreign-going vessels whilst in customs seaports to travellers and crew on board the vessel;
- (b) regulating the sale in terms of section **334** of stores on board foreign-going vessels or aircraft or cross-border trains to travellers and crew on board a vessel, aircraft or train free from import tax, domestic tax and export tax;

<sup>254</sup> For tax consequences if goods are regarded to be cleared for home use, see section **153**; for other consequences of non-compliance with customs procedures, see sections **130**.

<sup>255</sup> See section **128** for general grounds on which goods under a customs procedure must or may be regarded to have reverted to free circulation.

<sup>256</sup> For tax consequences if goods are regarded as having reverted to free circulation, see section **160**; for other consequences of non-compliance with customs procedures, see sections **127**.

### **Offences in terms of this Chapter**

**345.** (1) A person is guilty of an offence if that person contravenes section **332(3)** or **335(1)**.

(2) The carrier operating a foreign-going vessel or aircraft or cross-border train referred to in section **219(2)** is guilty of an offence –

- (a) if section **324(1)**, **329(1)** or (2)(a) or (b), **335(1)** or (2) or **338(a)** is contravened with respect to stores on board that vessel, aircraft or train; or
- (b) if a direction in terms of section **336** is not complied with.

(3) The on-board operator of a foreign-going vessel or aircraft or cross-border train referred to in section **219(2)** is guilty of an offence –

- (a) if that person fails to comply with section **328** or **332(4)**;
- (b) if section **324(1)**, **329(1)** or (2)(a) or (b), **335(1)** or (2) is contravened with respect to stores on board that vessel, aircraft or train; or
- (c) if a direction in terms of section **336** is not complied with.

(4) The on-board operator of a foreign-going vessel referred to in section **219(2)** is guilty of an offence –

- (a) if stores on board the vessel are issued or used otherwise than in accordance with section **333(1)** or (2); or
- (b) if that person fails to comply with section **333(4)**.

(5) A crew member of a foreign-going vessel or aircraft or cross-border train referred to in section **219(2)** is guilty of an offence if section **337** is contravened with respect to stores in possession of that crew member.

(6) A contravention of or failure to comply with section **324(1)**, **329(1)** or (2) or **335(1)** is a Category 1 offence.

## **CHAPTER 15 EXPORT PROCEDURE**

### ***Part 1: Introductory provisions***

#### **Purpose and application of this Chapter**

**346.** (1) The purpose of this Chapter is to regulate the export procedure.

- (2) This Chapter applies to goods destined for –
- (a) outright export;
  - (b) export under –
    - (i) the temporary admission procedure, if the goods are cleared and released for that procedure in terms of Part 2 of Chapter 11;
    - (ii) the temporary export procedure in terms of Part 2 of Chapter 16; or
    - (iii) the outward processing procedure in terms of Chapter 19; or
  - (c) export as inward processed compensating products under the inward processing procedure in terms of Chapter 17.

- (3) This Chapter does not apply to goods exported under –
- (a) the international transit procedure in terms of Chapter 9;
  - (b) the transshipment procedure in terms of Chapter 10;
  - (c) the temporary admission procedure, if the goods came under that procedure –
    - (i) in terms of international clearance arrangements provided for in Part 4 of Chapter 11; or
    - (ii) automatically in terms of Part 4 of that Chapter;
  - (d) the tax free shop procedure in terms of Chapter 13;
  - (e) the stores procedure in terms of Chapter 14; or
  - (f) any other exclusion in terms of section 110 from export clearance requirements.

### **Export procedure**

**347.** The export procedure is the customs procedure that allows -

- (a) the export of goods from the Republic; and
- (b) the transport of goods under the export procedure to the place of exit where the goods are to be exported without clearing the goods for transit.

### **Commencement and completion of export procedure**

**348.** (1) Goods come under the export procedure when the goods are in terms of this Chapter cleared for export. The export procedure is, subject to subsection (2), completed when the goods are exported from the Republic.

- (2) The export procedure ends before its completion if –
- (a) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
  - (b) completion of the procedure is interrupted by an occurrence referred to in section 124(2).

### **Extent to which Chapters 5 and 7 apply**

**349.** Chapters 5 and 7, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter, apply to goods under the export procedure,<sup>257</sup> including to the clearance and release of goods for the export procedure.

### ***Part 2: Clearance and release of goods for export from Republic***<sup>258</sup>

#### **Clearance of goods for export**

**350.** Goods to be cleared for export from the Republic must be cleared in accordance with section 349.

#### **Persons entitled to submit export clearance declarations**

**351.** Only the following persons may, subject to section 165(2), submit clearance declarations to clear goods for the export procedure:<sup>259</sup>

- (a) the exporter of the goods, if that exporter is located in the Republic;
- (b) the agent in the Republic of the exporter, if the exporter is not located in the Republic;  
or
- (c) a customs broker referred to in section 165(1)(b).

#### **Contents of export clearance declarations**

**352.** (1) An export clearance declaration must, in addition to the information required in terms of section 167, state the following:

- (a) the amount of any tax and the kind of tax paid on the goods, if reclaimable on the export of the goods;
- (b) the amount of any export tax payable on the goods, and the kind of export tax;
- (c) in the case of goods to be exported from the Republic –
  - (i) by sea, air or rail, the customs code of the licensed terminal where the goods will be loaded on board the foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported from the Republic; or
  - (ii) by road, the customs code of the land border-post where the goods will be exported from the Republic;
- (d) in the case of goods that will be transported by road from a licensed terminal or depot to a land border-post where the goods will be exported from the Republic, the customs code of –
  - (i) that terminal or depot; and

<sup>257</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter 5 or 7, the provision of this Chapter prevails. See sections 103(3) and 162(3).

<sup>258</sup> For tax status of goods cleared for outright export, see section 135.

<sup>259</sup> See section 165(1)(a).

- (ii) the licensed carrier that will transport the goods by road from that terminal or depot to that land border-post; and
- (e) whether any exchange control measures are applicable to the export of the relevant goods.

#### **Time of delivery of goods to export terminals**

- 354.** (1) Goods that are cleared for export in terms of the export procedure<sup>260</sup> must –
- (a) in the case of goods that will be exported by sea, be delivered to the sea cargo terminal where the goods will be loaded on board a foreign-going vessel in which the goods are to be exported, at least a number of hours as may be prescribed by rule before the vessel is scheduled to depart from that terminal;
  - (b) in the case of goods that will be exported by air, be delivered to the air cargo terminal where the goods will be loaded on board a foreign-going aircraft in which the goods are to be exported, at least a number of hours as may be prescribed by rule before the aircraft is scheduled to depart from that terminal; or
  - (c) in the case of goods that will be exported by rail, be delivered to the rail cargo terminal where the goods will be loaded on board a cross-border railway carriage in which the goods are to be exported, at least a number of hours as may be prescribed by rule before the railway carriage is scheduled to depart from that terminal.
- (2) Subsection (1) does not apply to –
- (a) accompanied or unaccompanied baggage of persons leaving the Republic;
  - (b) postal articles handled by the South African Post Office; or
  - (c) any other category of goods as may be determined by rule.

#### **Time when goods may be released for export**

- 355.** (1) The customs authority may not release goods for export under the export procedure –
- (a) in the case of goods that will be exported by sea, air or rail, before the goods have been –
    - (i) delivered to the terminal where the goods will be loaded on board a foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported; or
    - (ii) packed into a container and sealed at a container depot for delivery to a terminal; or

<sup>260</sup> See section 109 for timeframes applicable to the clearance of goods under the export procedure.

- (b) in the case of goods that will be exported by road, before the vehicle that will transport the goods out of the Republic has reached the land border-post where the goods will be exported.

(2) Subsection (1) does not apply to goods under the warehousing procedure or compensating products under the inward processing procedure and such goods or compensating products may be released for export in terms of the export procedure at any time after clearance for export, provided section 109 is complied with.

#### **Time within which goods released for export must be loaded for export or exported**

**356.** (1) Goods released by the customs authority for export in terms of the export procedure must –

- (a) in the case of goods to be exported by sea, be loaded within a timeframe as may be prescribed by rule after the release of the goods for export on board the vessel in which the goods are to be exported;
- (b) in the case of goods to be exported by air, be loaded within a timeframe as may be prescribed by rule after the release of the goods for export on board the aircraft in which the goods are to be exported;
- (c) in the case of goods to be exported by rail, be loaded within a timeframe as may be prescribed by rule after the release of the goods for export on board the railway carriage in which the goods are to be exported; or
- (d) in the case of goods to be exported by road, be exported within a timeframe as may be prescribed by rule after the release of the goods for export.

(2) A person who cleared goods for export must provide proof to the customs authority that the goods were exported, as may be prescribed by rule.

(3) The licensee of a sea cargo terminal, air cargo terminal or rail cargo terminal where goods are to be loaded for export under the export procedure must immediately notify the customs authority of any failure to load the goods for export within the timeframes applicable to the goods in terms of subsection (1)(a), (b) or (c).

#### **Failure to load for export goods released for export**

**357.** If goods that are cleared and released for export under the export procedure are not loaded for export, in the case of goods to be exported by sea, air or rail, or not exported, in the case of goods to be exported by road, within the timeframes applicable to the goods in terms of section 356(1) –



- (a) the person clearing the goods for export must immediately notify the customs authority of –
  - (i) the failure to load for export, or to export, the goods, as the case may be; and
  - (ii) the reasons for the failure; and
- (b) the customs authority may, whether a notification in terms of paragraph (a) has been given or not –
  - (i) require the goods to be secured in such manner as the customs authority may determine pending the export of the goods in terms of the release;
  - (ii) withdraw in terms of section **120** the release given in respect of the goods;<sup>261</sup> or
  - (iii) issue a direction in terms of section **127(2)** or **128(2)**, as may be appropriate, whether or not the release has been withdrawn.

**Clearance of goods exported through cross-border transmission lines, pipelines, cable-cars or conveyor belts**

**358.** The Commissioner may by rule –

- (a) prescribe special processes and requirements for the clearance and release for outright export of –
  - (i) electricity to be exported through licensed cross-border transmission lines; and
  - (ii) other goods to be exported through licensed cross-border pipelines or by means of licensed cross-border cable cars or conveyor belts; and
- (b) exempt such electricity or other goods from a provision of this Act relating to the clearance or release of goods.

***Part 5: Other matters***

**Rules to facilitate implementation of this Chapter**

**359.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) documents that may be used to prove that goods were –
  - (i) loaded for export;
  - (ii) exported from the Republic;
- (b) .....

**Offences in terms of this Chapter**

**360.** (1) A person clearing the goods for export is guilty of an offence if that person fails to comply with section **354(1)** or **357(a)**.

<sup>261</sup> For consequences of a withdrawal of a release, see section **121**.

- (2) A contravention of section 357(a) is a Category 1 offence.

**CHAPTER 16**  
**TEMPORARY EXPORT PROCEDURE**  
*Part 1: Introductory provisions*

**Purpose and application of this Chapter**

**361.** (1) The purpose of this Chapter is to regulate the temporary export procedure.

(2) This Chapter applies to the export of goods from the Republic temporarily and the return of those goods to the Republic.

**Temporary export procedure**<sup>262</sup>

**362.** (1) The temporary export procedure is a customs procedure that allows –

- (a) goods –
- (i) to be temporarily exported from the Republic with the intention to return the goods to the Republic; and
  - (ii) to be returned to the Republic as re-imported unaltered goods; or
- (b) goods exported outright from the Republic to be returned to the Republic as re-imported unaltered goods.

(2) The temporary export procedure is not available for –

- (a) goods that are of a nature that will make them, when eventually re-imported, unlikely to be identified as the same goods; or
- (b) goods of a category as may be prescribed by rule as goods for which the temporary export procedure is not available.

**Commencement and completion of temporary export procedure**

**363.** (1) Goods come under –

- (a) the temporary export procedure contemplated in section 362(1)(a) –
- (i) when cleared for temporary export in terms of Part 2, in the case of goods to which that Part applies;
  - (ii) when cleared for temporary export in terms of international customs arrangements referred to in Part 4, in the case of goods to which that Part applies; or

<sup>262</sup> For tax status of goods under the temporary export procedure, see section 146.

- (iii) upon leaving the Republic, in the case of goods that automatically come under the temporary export procedure in terms of Part 5; or
- (b) the temporary export procedure contemplated in section 362(1)(b), retrospectively as from the time the goods are cleared and released in terms of Chapter 15 for outright export from the Republic.

- (2) The temporary export procedure is, subject to subsection (3), completed –
  - (a) in the case of goods referred to in subsection (1)(a)(i) or (b), when the goods are returned to the Republic and cleared and released as re-imported unaltered goods for home use in terms of Part 3;
  - (b) in the case of goods referred to in subsection (1)(a)(ii), when the goods are returned to the Republic in accordance with the international clearance arrangements set out in Part 4; or
  - (c) in the case of goods referred to in subsection (1)(a)(iii), when the goods re-enter the Republic.

(3) The temporary export procedure ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section 124(2).

#### **Extent to which Chapters 5 and 7 apply**

**364.** Chapters 5 and 7, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter, apply to all goods under the temporary export procedure,<sup>263</sup> including to the clearance and release of goods –

- (a) for temporary export in terms of Part 2 or 4; or
- (b) as re-imported unaltered goods for home use in terms of Part 3.

#### ***Part 2: Clearance and release of goods for temporary export***

##### **Application of this Part**

- 365.** (1) This Part –
- (a) applies to goods to be cleared for temporary export otherwise than in accordance with the international clearance arrangements provided for in Part 4; and
  - (b) does not apply to goods that automatically come under the temporary export procedure in terms of Part 5.

(2) Goods to be cleared for temporary export under this Part must be cleared for export in accordance with Chapter 15,<sup>264</sup> read with section 364(a).

<sup>263</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter 5 or 7 the provision of this Chapter prevails. See sections 103(3) and 162(3).

<sup>264</sup> See also section 346(2)(b)(i) which states that Chapter 15 applies to goods destined for temporary export.

### **Clearing of goods for temporary export**

- 366.** (1) If a person clears goods for temporary export in terms of Chapter 15 –
- (a) the export clearance declaration referred to in section 352 must state –
    - (i) the intention to return the goods to the Republic as re-imported unaltered goods; and
    - (ii) the date before which the goods will be returned to the Republic; and
  - (b) that person must –
    - (i) either provide security for the payment of any export tax or pay the amount of any export tax that may become payable on the goods should the goods lose their tax free status in relation to export tax; and
    - (ii) comply with such further requirements as may be prescribed by rule or as the customs authority may determine in a specific case.
- (2) The customs authority may exempt a person from compliance with subsection (1)(b)(i).
- (3) Goods may in terms of subsection (1) be cleared for temporary export only if the goods will be returned to the Republic in the same state they were when exported.

### **Release of goods for temporary export**

- 367.** (1) If goods are released for temporary export, the release notification –
- (a) must state the period within which the goods must be returned to the Republic; and
  - (b) may state measures to be taken to ensure accurate identification of the goods upon their return to the Republic.
- (2) A period determined in terms of subsection (1) may not exceed –
- (a) the maximum period as may be prescribed by rule for the category in which the goods fall; or
  - (b) one year from the date of clearance of the goods, if no period is prescribed for the relevant category of goods.
- (3) The period mentioned in a release notification may be extended in terms of section 875 only once except if good cause is shown for an additional extension.

### **Simplified clearance and release for commercial trucks temporarily leaving Republic**

- 368.** Trucks leaving the Republic as a means of transport currently in use for the transport of goods in the ordinary course of international trade may, despite the other provisions of this

Part, be cleared and released for the temporary export procedure in accordance with simplified clearance and release processes and requirements referred to in Part 3 of Chapter 23 if the truck –

- (a) is not leaving the Republic on the return leg of the temporary admission procedure;<sup>265</sup> and
- (b) is destined to return to the Republic without any interruption in its current use as a means of transport for goods in the ordinary course of international trade.

#### **Simplified clearance and release for buses and taxis temporarily leaving Republic**

**369.** Buses or taxis leaving the Republic as a means of transport for travellers visiting abroad or returning home may, despite the other provisions of this Part, be cleared and released for the temporary export procedure in accordance with simplified clearance and release processes and requirements referred to in Part 3 of Chapter 23 if –

- (a) the bus or taxi is not leaving the Republic on the return leg of the temporary admission procedure;<sup>266</sup>
- (b) no international clearance arrangements referred to in Part 4 are available for the departure of the bus or taxi from the Republic; and
- (c) the bus or taxi is destined to return to the Republic without any interruption in its current use as a means of transport for travellers.

#### **Simplified clearance and release requirements for private vehicles, small vessels and light aircraft temporarily leaving Republic**

**370.** Vehicles, small vessels or light aircraft leaving the Republic as a private means of transport for a traveller visiting abroad<sup>267</sup> may, despite the other provisions of this Part, be cleared and released for the temporary export procedure in accordance with simplified clearance and release processes and requirements referred to in Part 3 of Chapter 23 if –

- (a) the vehicle, vessel or light aircraft is not leaving the Republic on the return leg of the temporary admission procedure;<sup>268</sup>
- (b) no international clearance arrangements referred to in Part 4 are available for the vehicle, vessel or light aircraft; and
- (c) the vehicle, vessel or light aircraft is destined to return to the Republic without any interruption in its current use as a private means of transport for that traveller.

### ***Part 3: Clearance and release of re-imported unaltered goods for home use***

#### **Application of this Part**

<sup>265</sup> See section 261.

<sup>266</sup> See section 262.

<sup>267</sup> For determining when a vessel, aircraft or vehicle qualifies as a small vessel, light aircraft or vehicle used as a private means of transport, see section 870(1)(n).

<sup>268</sup> See section 263.

**371.** (1) This Part applies to the clearance and release of goods for home use as re-imported unaltered goods that were exported from the Republic in terms of a clearance and release for –

- (a) temporary export in terms of Part 2; or
- (b) outright export in terms of Chapter 15.

(2) This Part does not apply to goods returned to the Republic under the temporary export procedure –

- (a) in accordance with the international clearance arrangements provided for in Part 4; or
- (b) in terms of Part 5.

(3) Goods to which this Part applies must be cleared as re-imported unaltered goods for home use in accordance with section 364(b).

### **Conditions for clearance of goods as re-imported unaltered goods for home use**

**372.** (1) Goods may be cleared in terms of this Part as re-imported unaltered goods for home use only if –

- (a) the goods were previously exported from the Republic under the temporary export procedure or for outright export;
- (b) the goods can be identified as the same goods originally exported from the Republic or the importer furnishes proof that the goods are the same goods originally exported;
- (c) the importer provides sufficient information to the customs authority concerning –
  - (i) any export tax paid on the original export of the goods; and
  - (ii) any benefit given in terms of an export incentive scheme to any person on the original export of the goods, whether in the form of a tax reduction or relief, an export or other subsidy, a rebate or reward or other benefit;<sup>269</sup>
- (d) the goods are returned to the Republic –
  - (i) in the case of temporarily exported goods referred to in section 362(1)(a), within the period expiring on the date stated in the export clearance declaration in accordance with section 366(1)(a)(ii) or as extended in terms of section 875; or
  - (ii) in the case of outright exported goods referred to in section 362(1)(b), within 90 calendar days of the date of export or within any extended period in terms of section 875;
- (e) the goods are returned within that period but, whilst abroad, have not undergone manufacturing, processing or repairs other than maintenance in connection with their use abroad; and

<sup>269</sup> For instance where goods were outright exported and then returned under the temporary export procedure.

- (f) any conditions subject to which the goods were released for export in terms of section **119** read with section **367** have been complied with.

(2) Goods may in terms of subsection (1) be cleared as re-imported unaltered goods for home use despite the fact that –

- (a) only a part of the originally exported goods is re-imported;
- (b) the goods are re-imported in separate consignments;
- (c) the goods are re-imported by a person other than the person who exported the goods, provided that that person –
  - (i) is authorised by the original exporter to re-import the goods; and
  - (ii) is able to provide the information required in terms of subsection (1); or
- (d) the goods, whilst abroad –
  - (i) have been used whether or not to their full capacity;
  - (ii) have been damaged; or
  - (iii) have deteriorated.

#### **Persons entitled to submit re-importation clearance declarations**

**373.** Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear goods in terms of this Part as re-imported unaltered goods for home use:<sup>270</sup>

- (a) the importer of the goods, if that importer is located in the Republic;
- (b) the agent in the Republic of the importer, if that importer is not located in the Republic; or
- (c) a customs broker referred to in section **165(1)(b)**.

#### **Contents of re-importation clearance declarations**

**374.** (1) A clearance declaration submitted to clear goods in terms of this Part as re-imported unaltered goods for home use must, in addition to the matters required in terms of section **167**, state –

- (a) that the goods were previously exported from the Republic;
- (b) the date on which the goods were exported; and
- (c) the amount of any export tax paid on those goods when the goods were exported, the kind of export tax paid and whether the tax is to be reclaimed.

(2) A re-importation clearance declaration must be accompanied by a statement stating –

- (a) whether the goods, whilst abroad, have undergone –

<sup>270</sup> See section **165(1)(a)**.

- (i) any manufacturing, processing or repairs other than maintenance in connection with their use abroad; or
- (ii) any change of ownership;
- (b) whether the exporter or any other person at the time of export of the goods from the Republic paid or reclaimed any tax paid on the goods, and if so –
  - (i) the kind of tax; and
  - (ii) the amount of tax paid or reclaimed;
- (c) the number and date of the export clearance declaration submitted in respect of the goods at the time of export of the goods; and
- (d) in the case of outright exported goods referred to in section **362(1)(b)** –
  - (i) the reason why the goods are returned to the Republic; and
  - (ii) whether the exporter or any other person were granted any benefit by any organ of state in respect of the export of the goods.

#### **Repayment of export benefits**

**375.** The person clearing outright exported goods referred to in section **362(1)(b)** as re-imported unaltered goods for home use in terms of this Part forfeits any benefit referred to in section **374(2)(d)(ii)** and must repay any benefit granted in respect of the export of the goods.

#### **Simplified home use clearance and release of commercial trucks re-entering Republic**

**376.** Trucks which left the Republic as a means of transport under a clearance and release for temporary export in terms of section **368** may on their return to the Republic, despite the other provisions of this Part, be cleared and released for home use as re-imported unaltered goods in accordance with simplified clearance and release processes and requirements referred to in Part **3** of Chapter **23**.

#### **Simplified home use clearance and release of buses and taxis re-entering Republic**

**377.** Buses or taxis which left the Republic as a means of transport under a clearance and release for temporary export in terms of section **369** may on their return to the Republic, despite the other provisions of this Part, be cleared and released for home use as re-imported unaltered goods in accordance with simplified clearance and release processes and requirements referred to in Part **3** of Chapter **23**.

#### **Simplified home use clearance and release of private vehicles, small vessels and light aircraft re-entering Republic**

**378.** Vehicles, small vessels or light aircraft which left the Republic as a private means of transport for a traveller under a clearance and release for temporary export in terms of section **370** may on their return to the Republic, despite the other provisions of this Part, be



cleared and released for home use as re-imported unaltered goods in accordance with simplified clearance and release processes and requirements referred to in Part 3 of Chapter 23.

#### **Refusal to release goods as re-imported unaltered goods for home use**

**379.** If the customs authority refuses to release goods as re-imported unaltered goods for home use which are cleared in terms of this Part, whether on the ground that a condition referred to in section 372(1) was not met or on any other ground,<sup>271</sup> the clearance in terms of this Part lapses and those goods must within five calendar days of the date of refusal be cleared for –

- (a) home use in terms of Chapter 8; or
- (b) a permissible customs procedure.

#### ***Part 4: Temporary export of goods under international clearance arrangements***

##### **Application of this Part**

**380.** (1) This Part –

- (a) gives effect to –
  - (i) the Convention on Temporary Admission; and
  - (ii) any agreement between the Republic and another country regulating the temporary export of goods from the Republic for temporary admission into that other country in accordance with agreed customs arrangements; and
- (b) applies to goods described in the Convention or agreement and temporarily exported from the Republic to another country that may in terms of the Convention or agreement be placed under temporary admission in that country on authority of CPD or ATA carnets.

(2) Goods to be cleared for temporary export under this Part must be cleared in accordance with section 364(a) read with section 381.

##### **Temporary export of goods from the Republic on authority of CPD and ATA carnets**

**381.** (1) Goods referred to in section 380 may be cleared and released for temporary export to a country referred to in that section on authority of a CPD or ATA carnet –

- (a) issued by an issuing association;
- (b) guaranteed by a guaranteeing association approved in terms of section 383; and
- (c) accepted by the customs authority.

<sup>271</sup> See sections 114 and 115.

(2) A CPD or ATA carnet must be produced to the customs authority at the Customs Office serving the place of exit where the goods are to be temporarily exported.

#### **Issuing associations located in Republic to be approved**

**382.** No CPD or ATA carnet issued by an issuing association located in the Republic may be accepted by the customs authority unless the issuing association has been approved by the customs authority for the purposes of this Part;

#### **Guaranteeing associations to be approved**

**383.** (1) No CPD or ATA carnet issued by an issuing association may be accepted by the customs authority unless the guaranteeing association guaranteeing the carnet has been approved by the customs authority for the purposes of this Part.

(2) No guaranteeing association may be approved unless the association –

- (a) is located in the Republic; and
- (b) has given security for the payment of any tax that may become payable on any goods that are cleared for temporary export on authority of a CPD or ATA carnet guaranteed by that guaranteeing association.

(3) The conditions subject to which an approval in terms of subsection (1) may be granted in terms of section **883** may include conditions requiring the association to assist the Commissioner in combating fraud and contravention or abuse of this Part.

#### **Formats of CPD and ATA carnets**

**384.** CPD and ATA carnets must conform to the models set out in the Convention on Temporary Admission or relevant international agreement referred to in section **380(1)(a)**.

#### **Validity period of CPD and ATA carnets**

**385.** (1) A CPD or ATA carnet remains valid for the period for which it was issued in terms of the Convention or agreement referred to in section **380(1)(a)**.

(2) If any extension is required, the goods may remain under temporary export only if –

- (a) a new CPD or ATA carnet is issued by an issuing association; and
- (b) the new carnet has been accepted by the customs authority.

#### **Amendment of CPD and ATA carnets**

**386.** Once a CPD or ATA carnet has been accepted by the customs authority no amendment may be made to the carnet except with the approval of the customs authority.

**Return of goods under temporary export procedure in terms of this Part**

**387.** The person to whom a CPD or ATA carnet was issued must ensure that the goods to which the carnet relates are returned to the Republic before the expiry of –

- (a) the validity period of the carnet; or
- (b) any extended period granted in terms of section **875**.

**Clearance of goods when returned to Republic**

**388.** (1) Goods under the temporary export procedure in terms of this Part must be cleared as re-imported unaltered goods for home use in accordance with section **364(b)** read with subsection (2).

(2) Goods under the temporary export procedure in terms of this Part may when returned to the Republic be cleared and released for home use as re-imported unaltered goods on authority of a CPD or ATA carnet –

- (a) issued by an issuing association;
- (b) guaranteed by a guaranteeing association approved in terms of section **383**; and
- (c) accepted by the customs authority.

(3) A CPD or ATA carnet must be produced to the customs authority at the Customs Office serving the place of entry where the goods are re-imported into the Republic.

(4) The onus to prove that goods under the temporary export procedure in terms of this Part, were returned to the Republic, or were returned to the Republic within the required period, rests on the person to whom the CPD or ATA carnet on authority of which the goods were exported from the Republic was issued.

***Part 5: Goods which automatically come under temporary export procedure***

**Foreign-going vessels, aircraft, locomotives and railway carriages leaving Republic**

**389.** (1) A vessel, aircraft, locomotive or railway carriage leaving the Republic as a means of transport currently in use for the transport of goods in the ordinary course of international trade or for the transport of travellers for reward between countries, comes under the temporary export procedure without any formal clearance or release for that procedure if the vessel, aircraft, locomotive or railway carriage –

- (a) is not leaving the Republic on the outbound leg of the temporary admission procedure;<sup>272</sup> and
- (b) is destined to return to the Republic without any interruption in its current use as a means of transport for goods in the ordinary course of international trade or for the transport of travellers for reward between countries.<sup>273</sup>

(2) If the current use of a vessel, aircraft, locomotive or railway carriage that automatically came under the temporary export procedure in terms of subsection (1) as a means of transport for goods in the ordinary course of international trade or for the transport of travellers for reward between countries, is for any reason interrupted whilst the vessel, aircraft, locomotive or railway carriage is under that procedure, the carrier operating that vessel, aircraft, locomotive or railway carriage must immediately report the matter to the customs authority, as may be prescribed by rule.

(3) Parts **2, 3** and **4** of this Chapter do not apply to vessels, aircraft, locomotives or railway carriages referred to in subsection (1).

### **Reusable transport equipment leaving Republic**

**390.** (1) Transport equipment leaving the Republic as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, comes under the temporary export procedure without any formal clearance or release for that procedure if –

- (a) that transport equipment is not leaving the Republic on the outbound leg of the temporary admission procedure;<sup>274</sup>
- (b) that transport equipment is destined to be returned to the Republic without any interruption in its current use as reusable transport equipment for goods in the ordinary course of international trade; and
- (c) the carrier who takes the transport equipment out of the Republic or, if that carrier is not located in the Republic, that carrier's registered agent, keeps record of that transport equipment, as may be prescribed by rule.

(2) If the current use of transport equipment that automatically came under the temporary export procedure in terms of subsection (1) as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, is for any reason interrupted whilst the transport equipment is under that procedure,

<sup>272</sup> See section **274**.

<sup>273</sup> The arrival and departure requirements set out in Chapter **3** are not affected by this provision and those requirements must be complied with when vessels, aircraft, locomotives or railway carriages that automatically come under the temporary export procedure leave or return to the Republic.

<sup>274</sup> See section **275**.

the carrier must immediately report the matter to the customs authority, as may be prescribed by rule.

(3) Parts **2, 3 and 4** of this Chapter do not apply to reusable transport equipment referred to in subsection (1).

### ***Part 6: Other matters***

#### **When goods under temporary export procedure must be regarded to be cleared for outright export**

**391.** Goods exported under the temporary export procedure must in terms of section **129** for tax purposes be regarded to be cleared for outright export<sup>275</sup> if –

- (a) the goods are not returned to the Republic within the period applicable to the goods;
- (b) the exporter notifies the customs authority that the goods will not be returned to the Republic; or
- (c) in the case of goods that are cleared for temporary export in terms of Part **2** –
  - (i) the goods upon their return to the Republic are not cleared in terms of Part **3** as re-imported unaltered goods for home use; or
  - (ii) the customs authority refuses to release the goods in terms of section **379** as re-imported unaltered goods for home use.

#### **Rules to facilitate implementation of this Chapter**

**392.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) a maximum period within which –
  - (i) goods cleared and released for temporary export in terms of Part **2** must be returned to the Republic;
  - (ii) vessels, aircraft, locomotives and railway carriages referred to in section **389** leaving the Republic under the temporary export procedure as a means of transport must return to the Republic; and
  - (iii) transport equipment leaving the Republic under the temporary export procedure as reusable transport equipment referred to in section **390** must be returned to the Republic;
- (b) the consequences if such goods are not returned or if such means of transport or transport equipment does not return to the Republic within the period prescribed in terms of paragraph (a) or extended in terms of section **875**;
- (c) the records that must be kept of such reusable transport equipment, including records of –

<sup>275</sup> For tax implications if goods are regarded to be cleared for outright export, see section **158**.

- (i) the type of transport equipment and number of each type that leaves or is returned to the Republic;
- (ii) the places of entry or exit through which, and the dates on which, such transport equipment left or was returned to the Republic; and
- (iii) the movement of such transport equipment in the Republic;
- (d) the persons by whom, and the periods for which, those records must be kept;
- (e) form, manner and time in which issuing associations located in the Republic and guaranteeing associations must apply for approval for purposes of Part 4;
- (f) any further requirements necessary to give effect to –
  - (i) the Convention on Temporary Admission; or
  - (ii) any agreement between the Republic and another country regulating the temporary export of goods from the Republic for temporary admission into that other country;

### **Offences in terms of this Chapter**

**393.** A carrier operating a vessel, aircraft, locomotive or railway carriage referred to in section **289**(1) is guilty of an offence if that carrier fails to comply with section **289**(2).

## **CHAPTER 17**

### **INWARD PROCESSING PROCEDURE**

#### ***Part 1: Introductory provisions***

#### **Purpose of this Chapter**

**394.** The purpose of this Chapter is to regulate the inward processing procedure.

#### **Inward processing procedure<sup>276</sup>**

- 395.** Inward processing is the customs procedure which allows –
- (a) imported goods identified in the Customs Tariff –
    - (i) to be processed in the Republic without clearing the goods for home use under Chapter **8**; and
    - (ii) for purposes of such processing to be –
      - (aa) transported without clearing the goods for national transit; and
      - (bb) stored without clearing the goods for warehousing; and
  - (b) products obtained from the processing of those goods –
    - (i) to be exported under this procedure as inward processed compensating products; and

<sup>276</sup> For tax status of goods under the inward processing procedure, see section **147**.

- (ii) for purposes of such export to be –
  - (aa) stored without clearing the products for warehousing; and
  - (bb) transported without clearing the products for national transit.

### **Commencement and completion of inward processing procedure**

**396.** (1) Imported goods come under the inward processing procedure when the goods are cleared for inward processing. The inward processing procedure is, subject to subsection (2), completed when the products obtained from the processing of those goods are cleared and released for export as inward processed compensating products and exported from the Republic.

- (2) The inward processing procedure ends before its completion if –
  - (a) the imported goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
  - (b) completion of the procedure is interrupted by an occurrence referred to in section **124(2)**.

### **Extent to which Chapters 5 and 7 apply**

**397.** Chapters **5** and **7**, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter, apply to all goods under the inward processing procedure,<sup>277</sup> including to the clearance and release of –

- (a) imported goods for inward processing; and
- (b) goods to be exported as inward processed compensating products.

### ***Part 2: Clearance and release of imported goods for inward processing***

#### **Clearance of imported goods for inward processing**

**398.** Imported goods to be cleared for inward processing must be cleared in accordance with section **397(a)**.

#### **Conditions for clearance of imported goods for inward processing**

- 399.** Imported goods may be cleared for the inward processing procedure only if –
- (a) the clearance for inward processing of goods of the relevant kind or category is authorised in the Customs Tariff;
  - (b) the requirements applicable to the clearance for inward processing of goods of that kind or category have been complied with, including any requirements and conditions as may be –

<sup>277</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter **5** or **7** the provision of this Chapter prevails. See sections **103(3)** and **162(3)**.

- (i) prescribed by rule;
  - (ii) specified in the Customs Tariff; or
  - (iii) determined in terms of a tax levying Act or other applicable legislation;
- (c) the person who is to carry out the inward processing of the goods undertakes to comply with the requirements applicable to the inward processing of such goods, including any requirements and conditions as may be –
- (i) prescribed by rule;
  - (ii) specified in the Customs Tariff; or
  - (iii) determined in terms of a tax levying Act or other applicable legislation;
- (d) the premises where the inward processing of the goods is to be carried out are licensed as premises for inward processing;
- (e) any import tax that may become payable on the goods is covered by security; and
- (f) measures have been taken to ensure that when goods are cleared for export from the Republic in terms of Part 3 as inward processed compensating products obtained from the imported goods, those goods could be verified as compensating products obtained from those imported goods.

#### **Persons entitled to submit inward processing clearance declarations**

**400.** Only the following persons may, subject to section 165(2), submit clearance declarations to clear imported goods for inward processing:<sup>278</sup>

- (a) the importer of the goods, provided that the importer is the licensee of the inward processing premises where the processing of the goods is to be carried out; or
- (b) a customs broker referred to in section 165(1)(b).

#### **Contents of inward processing clearance declarations**

**401.** A clearance declaration for inward processing of imported goods must, in addition to the information required in terms of section 167, state –

- (a) that the goods are cleared for the inward processing procedure;
- (b) the item number in the Customs Tariff authorising the clearance of goods of the relevant kind or category for inward processing;
- (c) details of any permit, permission or authorisation granted in respect of the goods in terms of any condition as may be prescribed by rule or specified in the Customs Tariff or determined in terms of a tax levying Act or other applicable legislation; and
- (d) the customs code of the licensed inward processing premises where the goods will be processed under that procedure.

#### **Release of imported goods for inward processing<sup>279</sup>**

<sup>278</sup> See section 165(1)(a).



**402.** (1) (a) When goods are released for the inward processing procedure, the goods must be delivered to the licensed inward processing premises where the goods will be processed under that procedure unless the customs authority authorises<sup>280</sup> the goods to be taken to another location.

(b) No person may redirect goods that are cleared for inward processing to a place other than the licensed premises or that other location.

(2) The release of goods for the inward processing procedure is subject to compliance with any conditions –

- (a) referred to in section **399**(c);
- (b) as may be prescribed by rule; and
- (c) as may be determined by the customs authority in terms of section **119** in a specific case.

### ***Part 3: Clearance and release of goods for export as inward processed compensating products***

#### **Clearance of goods for export under inward processing procedure**

**403.** Goods to be cleared for export as inward processed compensating products must be cleared for export in accordance with Chapter **15**<sup>281</sup> read with section **397**(b).

#### **Conditions for clearance of goods for export as inward processed compensating products**

**404.** Goods may be cleared for export as inward processed compensating products only if –

- (a) this Act have been complied with in respect of the inward processing of the imported goods from which those compensating products were obtained; and
- (b) any conditions subject to which those imported goods were released for inward processing in terms of section **402** have been complied with.

#### **Time limits on clearance for export of inward processed compensating products**

**405.** Goods to be cleared for export as inward processed compensating products must be cleared within –

- (a) a timeframe as may be determined in the Customs Tariff for the specific kind or category of goods; or

<sup>279</sup> If the release of goods for inward processing is refused, section **121** applies.

<sup>280</sup> See section **883** for authorisations granted on conditions.

<sup>281</sup> See also section **346**(2)(c) which states that Chapter **15** applies to goods destined for export as inward processed compensating products.

- (b) if not determined in the Customs Tariff, within two years from the date of import of the first constituent goods from which the compensating products were obtained, or such shorter period as may be prescribed by rule.

#### **Export of inward processed compensating products**

**406.** Goods may be cleared and released for export as inward processed compensating products despite the fact that –

- (a) not all the compensating products obtained from the imported goods that are cleared and released for inward processing are to be exported, subject to section **410(1)**;
- (b) the compensating products are exported in separate consignments, provided that a separate export clearance declaration is submitted in respect of each consignment; or
- (c) the compensating products are exported at a place of exit other than the place of entry through which the goods from which the products were obtained were originally imported.

#### **Persons entitled to submit export clearance declarations for inward processed compensating products**

**407.** Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear goods for export as inward processed compensating products: <sup>282</sup>

- (a) The person who originally cleared for inward processing the imported goods from which those products were obtained; or
- (b) a customs broker referred to in section **165(1)(b)**.

#### **Contents of export clearance declarations for inward processed compensating products**

**408.** A clearance declaration submitted in terms of Part 2 of Chapter 15 for the export of goods as inward processed compensating products must, in addition to the information required in terms of sections **167** and **352**, state –

- (a) that the goods are exported as inward processed compensating products;
- (b) the reference number and date of the inward processing clearance declaration submitted in respect of the imported goods from which those compensating products were obtained.

#### ***Part 4: Provisions regulating goods under inward processing procedure***

#### **Imported goods under inward processing procedure to be used only for production of inward processed compensating products**

<sup>282</sup> See section **165(1)(a)**.

**409.** (1) Imported goods cleared and released for inward processing may be used only for the production of inward processed compensating products of the kind or category for which the goods were cleared, subject to subsection (2) and section **411**.

(2) If goods under the inward processing procedure are for any reason no longer intended to be used, or are not used, for the purpose referred to subsection (1), the person clearing the goods must promptly –

- (a) notify the customs authority in writing; and
- (b) clear those goods in terms of section **125** for another customs procedure or for home use, if permissible in the circumstances.

(3) Section **121** applies if goods are cleared in terms of subsection (2) for another customs procedure or for home use and the release of the goods for that customs procedure or for home use is refused.<sup>283</sup>

#### **Compulsory export of inward processed compensating products**

**410.** (1) Inward processed compensating products must be exported from the Republic unless the imported goods from which those compensating products were obtained are in terms of section **125**, read with section **409**, cleared and released for home use before the expiry of the time limit applicable to those compensating products in terms of section **405**.

(2) If imported goods under the inward processing procedure are cleared for home use in terms of subsection (1) and the release of the goods for home use is refused,<sup>284</sup> the inward processed compensating products obtained from those goods must –

- (a) within five calendar days of the date of refusal be cleared for export; and
- (b) be exported from the Republic.

#### **By-products and commercially valuable waste**

**411.** (1) If by-products or commercially valuable waste is, in addition to compensating products, obtained from the processing of imported goods under the inward processing procedure, the by-products or waste must within the timeframe referred to in section **405** be cleared for export in terms of Part **3** as if the by-products or waste were inward processed compensating products.<sup>285</sup>

(2) By-products or commercially valuable waste may, despite subsection (1), be

<sup>283</sup> See sections **114** and **115**.

<sup>284</sup> See sections **114** and **115**.

<sup>285</sup> The effect of this provision is that by-products and waste must be cleared for export in accordance with the provisions applicable to the clearance of inward processed compensating products.

allowed into free circulation provided –

- (a) the clearance declaration submitted to clear the imported goods for inward processing is amended to exclude from that declaration a quantity of the imported goods which in accordance with a conversion rate determined in terms of section **412** equals the quantity of such by-products or waste; and
- (b) the quantity of imported goods excluded from that clearance declaration in terms of paragraph (a) is cleared for home use under Chapter **8** within the period referred to in subsection (1).

(3) A clearance in terms of subsection (2)(b) takes effect from the date the goods were cleared for inward processing.<sup>286</sup>

### **Conversion rates**

**412.** (1) The licensee of the inward processing premises where imported goods are processed under the inward processing procedure must determine a conversion rate, approved by the customs authority, that must for purposes of this Chapter be used for determining –

- (a) the quantity of compensating products, and of by-products or waste, that should in the ordinary course of processing the imported goods for the relevant purpose be obtained from a specific quantity of those goods; or
- (b) the quantity of those imported goods that, in the ordinary course of processing the goods for the relevant purpose, would have been used in order to obtain a specific quantity of compensating products, by-products or waste.

(2) Quantities may for purposes of subsection (1) be determined by number, weight, volume or any other measuring unit, as may be appropriate.

(3) In determining a conversion rate, account must be taken of any –

- (a) evaporation;
- (b) drying-out;
- (c) any other losses that may result from the nature of the goods used; and
- (d) any other relevant factors.

### **Identification measures**

**413.** The customs authority may take such steps as are necessary for the identification of goods to be exported as inward processed compensating products, including by –

<sup>286</sup> For time of clearance of goods, see section **173**.

- (a) recording any specific marks or numbers on the imported goods that are cleared for inward processing;
- (b) affixing any seals, stamps or individual marks to such goods;
- (c) taking any samples or making use of any illustrations or technical descriptions of such goods; or
- (d) requesting any documentary evidence concerning the processing of the goods.

### **Records and stocktaking**

**414.** (1) The licensee of inward processing premises where imported goods are processed under the inward processing procedure must keep such records in respect of the imported goods and the compensating products, by-products and commercially valuable waste obtained from the imported goods, as may be prescribed by rule.

(2) A customs officer may at any time during an inspection in terms of Chapter **32**

–

- (a) examine records kept in terms of subsection (1); and
- (b) take stock of imported goods that are cleared and released for inward processing and present on the licensed inward processing premises where the goods are processed.

(3) If during any stocktaking imported goods under the inward processing procedure are found to be –

- (a) greater than the quantity, weight or volume that should be on hand on the inward processing premises where the goods are processed, the excess must be taken as stock on hand; or
- (b) less than the quantity, weight or volume that should be on hand on the premises, the shortfall must be dealt with in terms of Chapter **24** as goods unaccounted for.

### **Subcontracting of inward processing operations**

**415.** (1) The licensee of inward processing premises where imported goods are processed under the inward processing procedure may, with the approval of the customs authority,<sup>287</sup> appoint a person as a subcontractor to undertake any aspect of such processing.

(2) Application for an approval in terms of subsection (1) must be made –

- (a) to the customs authority before the goods are delivered to the subcontractor; and
- (b) on a form and in accordance with such requirements as may be prescribed by rule.

<sup>287</sup> See section **883** for granting of approvals on conditions.

### **Use of equivalent goods**

**416.** (1) The customs authority may grant permission<sup>288</sup> to the licensee of the inward processing premises where goods are processed under the inward processing procedure to replace imported goods that are cleared and released for inward processing with domestic or other imported goods identical in description, quality, technical characteristics and quantity for use in the production of inward processed compensating products.

(2) If the customs authority has granted permission in terms of subsection (1) for equivalent goods to be used, those equivalent goods must for all purposes be regarded to be the imported goods cleared and released for inward processing.

### **Additional grounds for regarding goods under inward processing procedure to be cleared for home use<sup>289</sup>**

**417.** (1) Imported goods under the inward processing procedure must in terms of section **127**(1) for tax purposes be regarded to be cleared for home use under Chapter **8** –<sup>290</sup>

- (a) if the goods are in breach of section **409** used for a purpose other than the production of inward processed compensating products of the kind or category stated in the inward processing clearance declaration of the goods; or
- (b) if compensating products obtained from the processing of those goods –
  - (i) are for any reason not cleared for export as inward processed compensating products within the time limit applicable to those compensating products in terms of section **405**, subject to section **409**(2);
  - (ii) are otherwise diverted for home use;
  - (iii) are cleared and released for export as inward processed compensating products but not loaded for export, or exported, from the Republic within the timeframes applicable to the goods in terms of section **356**; or
  - (iv) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **2** of Chapter **24** that the compensating products were damaged, destroyed, lost or unaccounted for due to a cause set out in section **540**(1), **541**(1), **542**(1) or **543**(1) and, in the case of lost compensating products, that the products, after having been lost, have not gone into home use.

<sup>288</sup> See section **883** for granting of permissions on conditions.

<sup>289</sup> See section **127** for general grounds on which goods under a customs procedure must or may be regarded to be cleared for home use.

<sup>290</sup> For tax consequences if goods are regarded to be cleared for home use, see section **153**; for other consequences of non-compliance with customs procedures, see sections **130**.

(2) Subsection (1)(b) applies to by-products and commercially valuable waste derived from the processing of imported goods under the inward processing procedure as if such by-products or waste were inward processed compensating products, except when such by-products or waste is dealt with in terms of section **411**(2).

(3) When applying section **127**(1) to any imported goods under the inward processing procedure in circumstances where the ground for regarding the imported goods to be cleared for home use pertains only to a part of the compensating products obtained from the imported goods, only a proportionate part of the imported goods must in terms of that section be regarded to be cleared for home use. In determining the proportionate part of the imported goods that must be regarded to be cleared for home use, a conversion rate determined in terms of section **412** must be used.

**Effect on compensating products when goods under inward processing procedure regarded to be cleared for home use**

**418.** (1) Compensating products obtained from imported goods under the inward processing procedure lose their tax free status as inward processed compensating products if, and to the extent that, the imported goods are in terms of section **127** regarded to be cleared for home use.

(2) In applying subsection (1) a conversion rate determined in terms of section **412** must be used.

***Part 6: Other matters***

**Rules to facilitate implementation of this Chapter**

**419.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) regulating –
  - (i) the processing of goods under the inward processing procedure to prevent diversion of goods for home use or tax evasion; or
  - (ii) the appointment of persons as subcontractors to undertake any aspect of the processing of goods on behalf of a person carrying out the processing of those goods under the inward processing procedure;
- (b) prescribing the circumstances in which and the conditions on which –
  - (i) equivalent goods may be used in the production of inward processed compensating products; or

- (ii) by-products or commercially valuable waste obtained from the processing of goods under the inward processing procedure may be allowed into free circulation; and
- (c) ensuring that inward processed compensating products obtained from the processing of goods under the inward processing procedure are exported within the applicable timeframes;

### **Offences in terms of this Chapter**

**420.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section **402(1)(b)** or **407**.

- (2) A person clearing goods for inward processing is guilty of an offence –
  - (a) if section **409(1)**, **410(1)** or (2) or **411(1)** is contravened or not complied with; or
  - (b) if that person contravenes or fails to comply with section **409(2)**.

(3) A licensee of an inward processing premises is guilty of an offence if that person contravenes or fails to comply with section **414(1)**.

(4) A contravention of or failure to comply with section **402(1)(b)**, **409(1)**, (2) or (3), **410(1)** or (2) or **411(1)** or (2) is a Category 1 offence.

## **CHAPTER 18**

### **HOME USE PROCESSING PROCEDURE**

#### ***Part 1: Introductory provisions***

#### **Purpose of this Chapter**

**421.** The purpose of this Chapter is to regulate the home use processing procedure.

#### **Home use processing procedure<sup>291</sup>**

- 422.** Home use processing is the customs procedure that allows –
- (a) imported goods identified in the Customs Tariff to be conditionally released for processing in the Republic without clearing the goods for home use in terms of Chapter **8**, and for purposes of such processing –
    - (i) to transport the goods without clearing the goods for national transit; and
    - (ii) to store the goods without clearing the goods for warehousing; and

<sup>291</sup> For tax status of goods under the home use processing procedure, see section **148**.



- (b) products obtained from the processing of those goods into free circulation without clearing those products for home use.

### **Commencement and completion of home use processing procedure**

**423.** (1) Imported goods come under the home use processing procedure when the goods are cleared for home use processing. The home use processing procedure is, subject to subsection (2), completed when the conditions subject to which the goods were released for that procedure are complied with.

- (2) The home use processing procedure ends before its completion if –
  - (a) the imported goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
  - (b) completion of the procedure is interrupted by an occurrence referred to in section **124(2)**.

### **Extent to which Chapters 5 and 7 apply**

**424.** Chapters **5** and **7**, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter, apply to all goods under the home use processing procedure, including to the clearance and release of imported goods for home use processing.

### ***Part 2: Clearance and release of imported goods for home use processing***

#### **Clearance of imported goods for home use processing**

**425.** Imported goods to be cleared for home use processing must be cleared in accordance with section **424**.

#### **Conditions for clearance of imported goods for home use processing**

- 426.** Imported goods may be cleared for the home use processing procedure only if –
- (a) the clearance for that procedure of goods of the relevant kind or category is authorised in the Customs Tariff;
  - (b) the requirements applicable to the clearance for that procedure of goods of that kind or category have been complied with, including any requirements and conditions as may be –
    - (i) prescribed by rule;
    - (ii) specified in the Customs Tariff; or
    - (iii) determined in terms of a tax levying Act or other applicable legislation;

- (c) the person who is to carry out the home use processing of the goods undertakes to comply with the requirements applicable to the home use processing of such goods, including –
  - (i) any conditions subject to which the goods may be released for that procedure in terms of section **429**; and
  - (ii) any requirements and conditions as may be prescribed by rule, specified in the Customs Tariff or determined in terms of any relevant tax levying Act or other applicable legislation;
- (d) the premises where the home use processing of the goods is to be carried out are licensed as premises for home use processing; and
- (e) any import tax that may become payable on the goods is covered by security.

### **Persons entitled to submit home use processing clearance declarations**

**427.** Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear imported goods for home use processing:<sup>292</sup>

- (a) the importer of the goods, provided that the importer is the licensee of the home use processing premises where the processing of the goods is to be carried out; or
- (b) a customs broker referred to in section **165(1)(b)**.

### **Contents of home use processing clearance declarations**

**428.** A clearance declaration for home use processing of imported goods must, in addition to the information required in terms of section **167**, state –

- (a) that the goods are cleared for the home use processing procedure;
- (b) the item number in the Customs Tariff authorising the clearance of goods of the relevant kind or category for home use processing;
- (c) details of any permit, permission or authorisation granted in respect of the goods in terms of any condition prescribed by rule, specified in the Customs Tariff or determined in terms of a tax levying Act or other applicable legislation; and
- (d) the customs code of the licensed home use processing premises where the goods are to be processed under that procedure.

### **Release of imported goods for home use processing**

**429.** (1) Imported goods cleared for the home use processing procedure may only be released for that procedure on condition –

- (a) that the requirements relating to home use processing are complied with, including any requirements and conditions as may be –
  - (i) prescribed by rule;

<sup>292</sup> See section **165(1)(a)**.

- (ii) specified in the Customs Tariff or determined in terms of any relevant tax levying Act or other applicable legislation; or
  - (iii) determined by the customs authority in terms of section **119** in a specific case; and
- (b) that the imported goods are processed and compensating products obtained from those goods are dealt with in accordance with those requirements and conditions.

(2) (a) When goods are released for home use processing the goods must be delivered to the licensed home use processing premises where the goods will be processed under that procedure unless the customs authority authorises<sup>293</sup> the goods to be taken to another location.

(b) No person may redirect goods that are cleared for home use processing to a place other than the licensed premises or that other location.

### ***Part 3: Provisions regulating home use processing procedure***

#### **Goods under home use processing procedure only to be used for production of home use compensating products**

**430.** (1) Imported goods cleared and released for home use processing may be used only for the production of home use compensating products of the kind or category stated in the clearance declaration of the goods, subject to section **433**.

(2) If imported goods under the home use processing procedure are for any reason no longer intended to be used for the purpose referred to subsection (1), the person clearing the goods must promptly –

- (a) notify the customs authority in writing; and
- (b) clear those goods in terms of section **125** for another customs procedure or for home use, as may be permissible in the circumstances.<sup>294</sup>

(3) Section **121** applies if goods are cleared in terms of subsection (2) for another customs procedure or for home use and the release of the goods for that customs procedure or for home use is refused.<sup>295</sup>

#### **Time limits on completion of home use processing of goods**

**431.** The processing of imported goods under the home use processing procedure into home use compensating products must be completed within –

<sup>293</sup> See section **883** for authorisations granted on conditions.

<sup>294</sup> Failure to comply with this subsection may result in steps under section **130** or **107** which may include seizure of the goods.

<sup>295</sup> See sections **114** and **115**.

- (a) a timeframe as may be determined in the Customs Tariff for the specific kind or category of goods; or
- (b) if not determined in the Customs Tariff, within two years from the date of import of the first constituent goods from which the compensating products were obtained, or such shorter period as may be prescribed by rule.

#### **Home use compensating products to be dealt with as goods in free circulation**

**432.** (1) Compensating products obtained from the processing of imported goods under the home use processing procedure may, subject to subsection (2), be –

- (a) dealt with as goods in free circulation without any clearance and release of the goods for home use; or
- (b) be cleared and release for export as goods in free circulation, and exported from the Republic, in accordance with the export procedure.

(2) Subsection (1) applies to compensating products obtained from the processing of imported goods under the home use processing procedure only if the products were obtained in accordance with –

- (a) the provisions of this Act relating to home use processing; and
- (b) the conditions applicable to the goods in terms of section **429**.

#### **By-products and commercially valuable waste**

**433.** (1) If by-products or commercially valuable waste is, in addition to compensating products, obtained from the processing of imported goods under the home use processing procedure, the by-products or waste may be allowed into free circulation, provided –

- (a) the clearance declaration in terms of which the imported goods are cleared for home use processing is amended to exclude from that declaration a quantity of the imported goods which in accordance with a conversion rate determined in terms of section **434** equals the quantity of such by-products or waste; and
- (b) the quantity of imported goods excluded from the original clearance in terms of paragraph (a) is cleared for home use in terms of Chapter **8** within the period specified in section **431**.

(2) A clearance in terms of subsection (1)(b) takes effect from the date of the original clearance of the goods for home use processing.

#### **Conversion rates**

**434.** (1) The licensee of the home use processing premises where imported goods are processed under the home use processing procedure must determine a conversion rate,

approved by the customs authority, that must for purposes of this Chapter be used for determining –

- (a) the quantity of compensating products, and of by-products or waste, that should in the ordinary course of processing the imported goods for the relevant purpose be obtained from a specific quantity of those goods; or
- (b) the quantity of those imported goods that, in the ordinary course of processing the goods for the relevant purpose, would have been used in order to obtain a specific quantity of compensating products, by-products or waste.

(2) Quantities may for purposes of subsection (1) be determined by number, weight, volume or any other measuring unit, as may be appropriate.

(3) In determining a conversion rate, account must be taken of any –

- (a) evaporation;
- (b) drying-out;
- (c) any other losses that may result from the nature of the goods used; and
- (d) any other relevant factors.

### **Records and stocktaking**

**435.** (1) The licensee of the home use processing premises where imported goods are processed under the home use processing procedure must keep such records in respect of the goods and the compensating products, by-products and commercially valuable waste obtained from the goods, as may be prescribed by rule.

(2) A customs officer may at any time during an inspection in terms of Chapter **32**

–

- (a) examine the records kept in terms of subsection (1); and
- (b) take stock of imported goods under the home use processing procedure and present on the licensed home use processing premises where the goods are processed.

(3) If during any stocktaking imported goods under the home use processing procedure are found to be –

- (a) greater than the quantity, weight or volume that should be on hand on the home use processing premises where the goods are processed, the excess must be taken as stock on hand; or
- (b) less than the quantity, weight or volume that should be on hand on the premises, the shortfall must be dealt with in terms of Chapter **24** as goods unaccounted for.

### **Sub-contracting of home use processing operations**

**436.** (1) The licensee of home use processing premises where imported goods are processed under the home use processing procedure may, with the approval of the customs authority,<sup>296</sup> appoint a person as a subcontractor to undertake any aspect of such processing<sup>297</sup>.

- (2) Application for an approval in terms of subsection (1) must be made –
- (a) to the customs authority before the goods are delivered to the subcontractor; and
  - (b) on a form and in accordance with such requirements as may be prescribed by rule.

### **Additional grounds for regarding goods under home use processing procedure to be cleared for home use<sup>298</sup>**

**437.** Imported goods that are cleared and released for the home use processing procedure must in terms of section **127**(1) for tax purposes be regarded to be cleared for home use under Chapter **8** –<sup>299</sup>

- (a) if the goods are in breach of section **430** used for a purpose other than the production of home use compensating products of the kind or category stated in the home use processing clearance declaration of those goods; or
- (b) if the processing of the imported goods into home use compensating products is not completed within the timeframe applicable to the goods in terms of section **431**.

## ***Part 6: Other matters***

### **Rules to facilitate implementation of this Chapter**

**438.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) regulating –
  - (i) the processing of goods under the home use processing procedure to prevent diversion of goods for home use or tax evasion;
  - (ii) the appointment of persons as subcontractors to undertake any aspect of the processing of goods on behalf of a person carrying out the processing of those goods under the home use processing procedure, and the obligations of such subcontractors;
- (b) .....

<sup>296</sup> See section **883** for granting of approvals on conditions.

<sup>297</sup> Where a subcontractor undertakes any aspect of the home use processing of goods, the licensee of the home use premises remains liable for the completion of the home use processing procedure.

<sup>298</sup> See section **127** for general grounds on which goods under a customs procedure must or may be regarded to be cleared for home use.

<sup>299</sup> For tax consequences if goods are regarded to be cleared for home use, see section **153**; for other consequences of non-compliance with customs procedures, see section **103**.

### **Offences in terms of this Chapter**

**439.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section **427**, **429(2)(a)** or (b).

(2) A person who submits a home use processing clearance declaration is guilty of an offence if that home use processing clearance declaration does not contain the additional information required in terms of section **428**.

(3) A person clearing goods for home use processing of goods is guilty of an offence if that person contravenes or fails to comply with section **431**, **430(1)** or (2).

(4) A licensee of a home use processing premises is guilty of an offence if that person contravenes or fails to comply with section **434(1)** or **435(1)**.

(5) A contravention or failure to comply with section **429(2)(a)** or (b) or **430(1)** is a Category 1 offence.

## **CHAPTER 19**

### **OUTWARD PROCESSING PROCEDURE**

#### ***Part 1: Introductory provisions***

#### **Purpose of this Chapter**

**440.** The purpose of this Chapter is to regulate the outward processing procedure.

#### **Outward processing procedure<sup>300</sup>**

**441.** Outward processing is the customs procedure that allows –

- (a) goods identified in the Customs Tariff to be exported from the Republic under this procedure for processing abroad; and
- (b) products obtained from the processing of those goods to be imported into the Republic and cleared and released for home use under this procedure as outward processed compensating products.

#### **Commencement and completion of outward processing procedure**

**442.** (1) Goods come under the outward processing procedure when the goods are cleared for export under the outward processing procedure. The outward processing procedure is, subject to subsection (2), completed when products obtained from those goods

<sup>300</sup> For tax status of goods under the outward processing procedure, see section **149**.

are imported into the Republic and cleared and released for home use as outward processed compensating products.

(2) The outward processing procedure ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section **124(2)**.

#### **Extent to which Chapters 5 and 7 apply**

**443.** Chapters **5** and **7**, except insofar as a provision of those Chapters is modified, qualified or deviated from in this Chapter, apply to all goods under the outward processing procedure,<sup>301</sup> including to the clearance and release of –

- (a) goods for export for outward processing; and
- (b) imported goods for home use as outward processed compensating products.

#### ***Part 2: Clearance and release of goods for outward processing***

##### **Clearance of goods for outward processing procedure**

**444.** Goods to be cleared for outward processing must be cleared for export for outward processing in accordance with Chapter **15**<sup>302</sup> read with section **443(a)**.

##### **Conditions for clearance of goods for outward processing**

**445.** Goods may be cleared for outward processing only if –

- (a) the clearance for that procedure of goods of the relevant kind or category is authorised in the Customs Tariff;
- (b) the requirements applicable to the clearance for outward processing of goods of that kind or category have been complied with, including requirements and conditions as may be –
  - (i) prescribed by rule;
  - (ii) specified in the Customs Tariff; or
  - (iii) determined in terms of any relevant tax levying Act or other applicable legislation;
- (c) the person who clears the goods for outward processing –
  - (i) undertakes to comply with the requirements applicable to the outward processing of goods and the importation of outward processed compensating products obtained from those goods, including requirements and conditions as may be prescribed by rule, specified in the Customs Tariff or determined in terms of any relevant tax levying Act or other applicable legislation; and

<sup>301</sup> In the case of an inconsistency between a provision of this Chapter and a general provision contained in Chapter **5** or **7** the provision of this Chapter prevails. See sections **103(3)** and **162(3)**.

<sup>302</sup> See also section **346(2)(b)(iii)** which states that Chapter **15** applies to goods destined for export under the outward processing procedure.



- (ii) gives security for the payment of any export tax that may become payable on the goods; and
- (d) measures have been taken to ensure that when goods are cleared for home use as outward processed compensating products obtained from the exported goods, those goods could be verified as compensating products obtained from those goods.

#### **Persons entitled to submit clearance declarations for export of goods for outward processing**

**446.** Only the following persons may, subject section **165(2)**, submit clearance declarations to clear goods for export under the outward processing procedure:<sup>303</sup>

- (a) the exporter of the goods, if that exporter is located in the Republic;
- (b) the agent in the Republic of the exporter, if that exporter is not located in the Republic; or
- (c) a customs broker referred to in section **165(1)(b)**.

#### **Contents of clearance declarations for export of goods for outward processing**

**447.** An export clearance declaration submitted in terms of Part **2** of Chapter **15** for the export of goods for outward processing must, in addition to the information required in terms of section **167**, state –

- (a) that the goods are cleared for export for outward processing;
- (b) the item number in the Customs Tariff authorising the clearance of goods of the relevant kind or category for outward processing;
- (c) details of any permit, permission or authorisation granted in respect of the goods in terms of any condition prescribed by rule or specified in the Customs Tariff or determined in terms of a tax levying Act or other applicable legislation;
- (d) the name and street address of the person to whom any such permit, permission or authorisation was granted; and
- (e) the kind of compensating products that will be obtained from the outward processing of those goods.

#### **Release not to be limited to owners of goods**

**448.** The customs authority may not limit the release of goods for export for outward processing to the owner of the goods, but may grant such release to any person complying with the requirements applicable to the outward processing of goods of that kind or category, including any requirements and conditions as may be prescribed by rule, specified in the Customs Tariff or determined in terms of any relevant tax levying Act or other applicable legislation.

<sup>303</sup> See section **165(1)(a)**.

### **Release of goods for export under outward processing procedure**

**449.** The release of the goods for export under the outward processing procedure is subject to compliance with any conditions –

- (a) referred to in section **445(c)**;
- (b) as may be prescribed by rule; or
- (c) as may be determined by the customs authority in terms of section **119** in a specific case.

### ***Part 3: Clearance and release for home use of outward processed compensating products***

#### **Clearance of imported goods for home use as outward processed compensating products**

**450.** Imported goods to be cleared for home use as outward processed compensating products must be cleared in accordance with section **443(b)**.

#### **Conditions for clearance for home use of outward processed compensating products**

**451.** Goods may be cleared for home use as outward processed compensating products only if -

- (a) the requirements applicable to the outward processing of the goods from which the compensating products were obtained have been complied with; and
- (b) any conditions subject to which those goods were released for export under the outward processing procedure in terms of section **449** have been complied with.

#### **Time limit on clearance for home use of outward processed compensating products**

**452.** Compensating products obtained from goods exported from the Republic under the outward processing procedure may be cleared for home use as outward processed compensating products only if those compensating products were imported into the Republic –

- (a) within a timeframe as may be determined in the Customs Tariff for the specific kind or category of goods; or
- (b) if not determined in the Customs Tariff, within two years from the date of clearance<sup>304</sup> for outward processing of the goods from which those compensating products were obtained, or such shorter period as may be prescribed by rule.

#### **Importation of outward processed compensating products**

<sup>304</sup> See section **173** for time of clearance.

**453.** Goods may be cleared and released for home use as outward processed compensating products despite the fact that –

- (a) only a part of the compensating products obtained from the goods exported for outward processing are imported;
- (b) the compensating products are imported in separate consignments, provided that a separate clearance declaration must be submitted in respect of each consignment;
- (c) the compensating products are imported at a place of entry other than the place of exit from where the goods from which the products were obtained were originally exported; or
- (d) the compensating products are imported by a person other than the person who exported the goods from which the products were obtained.

**Persons entitled to submit home use clearance declarations for outward processed compensating products**

**454.** Only the following persons may, subject to section **165(2)**, submit clearance declarations to clear goods for home use as outward processed compensating products:<sup>305</sup>

- (a) The person who originally cleared the goods from which the compensating products were obtained for outward processing;
- (b) the importer of the goods, if that importer is located in the Republic;
- (c) the agent in the Republic of the importer, if that importer is not located in the Republic; or
- (d) a customs broker referred to in section **165(1)(b)**.

**Contents of home use clearance declarations for outward processed compensating products**

**455.** (1) A clearance declaration to clear goods for home use as outward processed compensating products must, in addition to the matters required in terms of section **167**, state –

- (a) that the goods are cleared for home use as outward processed compensating products;
- (b) the reference number and date of the clearance declaration submitted in respect of the export for outward processing of the goods from which those compensating products were obtained;
- (c) the street address of the person to whom the compensating products are consigned; and

<sup>305</sup> See section **165(1)(a)**.

- (d) the date, number and particulars of any permit or other authorisation issued in terms of any legislation in respect of the import of the compensating products, if such a permit or authorisation is a requirement for the import of the products.

(2) The person clearing goods for home use as outward processed compensating products must on request by the customs authority submit a statement stating in relation to the exported goods from which those compensating products were obtained –

- (a) whether the exporter or any other person reclaimed any import or domestic tax paid on the goods when exported, and if so –
  - (i) the kind of tax; and
  - (ii) the amount of tax reclaimed; and
- (b) if any benefit was paid to the exporter or other person under any export incentive scheme applicable to the goods, whether in the form of a tax reduction or relief, an export or other subsidy, a rebate or reward or other benefit.

#### ***Part 4: Provisions regulating outward processing procedure***

##### **Conversion rates for goods to compensating products**

**456.** (1) The customs authority may in respect of any goods exported under the outward processing procedure approve a conversion rate that must for purposes of this Chapter be used for determining –

- (a) the quantity of compensating products that should in the ordinary course of processing the exported goods for the relevant purpose be obtained from those goods; or
- (b) the quantity of those exported goods that, in the ordinary course of processing the goods for the relevant purpose, would have been used in order to obtain a specific quantity of compensating products.

(2) Quantities may for purposes of subsection (1) be determined by number, weight, volume or any other measuring unit, as may be appropriate.

- (3) In determining a conversion rate, account must be taken of any –
- (a) evaporation;
  - (b) drying-out;
  - (c) any other losses that may result from the nature of the goods used; or
  - (d) any other relevant factors.

##### **Identification measures**

**457.** The customs authority may take such steps as are necessary for the accurate identification of compensating products obtained from goods exported under the outward processing procedure when those products are cleared for home use as outward processed compensating products, including by –

- (a) recording any specific marks or numbers on goods exported under the outward processing procedure before their export;
- (b) taking any samples or making use of any illustrations or technical descriptions; or
- (c) requesting any documentary evidence concerning the processing abroad of the exported goods.

#### **Effect of transfer of ownership of outward processed compensating products**

**458.** Transfer of ownership of compensating products obtained from goods under the outward processing procedure prior to their clearance for home use as outward processed compensating products, does not affect the tax status<sup>306</sup> of those products, provided that –

- (a) the customs authority is informed of the transfer at the time of submission of the clearance declaration in terms of section **454**; and
- (b) any conditions as the customs authority may determine are complied with.

#### **Specific grounds for regarding goods exported under outward processing procedure to be cleared for outright export<sup>307</sup>**

**459.** (1) Goods exported under the outward processing procedure must in terms of section **129**(1) for tax purposes be regarded to be cleared for outright export<sup>308</sup> if –

- (a) the exported goods are not used for outward processing;
- (b) compensating products obtained from the processing of those exported goods –
  - (i) are not cleared for home use as outward processed compensating products within the timeframe applicable to the goods in terms of section **452**; or
  - (ii) are cleared but after clearance are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **2** of Chapter **24** that the compensating products were damaged, destroyed, lost or unaccounted for due to a cause set out in section **540**(1), **541**(1), **542**(1) or **543**(1) and, in the case of lost compensating products, that the products, after having been lost, have not gone into home use in any other way;
- (c) imported goods are cleared for home use as outward processed compensating products obtained from those exported goods and the customs authority refuses<sup>309</sup> to

<sup>306</sup> See section **149**.

<sup>307</sup> See section **129** for general grounds on which goods must or may be regarded to be cleared for outright export.

<sup>308</sup> For tax implications if goods are regarded to be cleared for outright export, see section **158**.

<sup>309</sup> See sections **114** and **115**.

release those imported goods for home use as outward processed compensating products;

- (d) imported goods are cleared and released for home use as outward processed compensating products obtained from those exported goods and the customs authority withdraws<sup>310</sup> the release of those imported goods for home use as outward processed compensating products; or
- (e) the customs authority is notified that compensating products obtained from those exported goods will not be cleared for home use as outward processed compensating products.

(2) When applying section **129(1)** to any goods exported under the outward processing procedure in circumstances where the ground for regarding the exported goods to be cleared for outright export pertains only to a part of the compensating products obtained from the exported goods, only a proportionate part of the exported goods must in terms of that section be regarded to be cleared for outright export. In determining the proportionate part of the exported goods that must be regarded to be cleared for outright export, a conversion rate determined in terms of section **456** must be used.

#### **Effect on outward processed compensating products when goods exported for outward processing are regarded to be cleared for outright export**

**460.** Compensating products obtained from goods exported under the outward processing procedure lose their tax free status as outward processed compensating products if those exported goods are in terms of section **129(1)** regarded to be cleared for outright export.

### ***Part 6: Other matters***

#### **Rules to facilitate implementation of this Chapter**

**461.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) the form and format of a statement referred to in section **455(2)**;
- (b) .....

#### **Offences in terms of this Chapter**

**462.** (1) A person –

- (a) who contravenes or fails to comply with section **446** or **454** is guilty of an offence; or
- (b) who submits -

<sup>310</sup> A release may be withdrawn in terms of section **120**.

- (i) an export clearance declaration for the export of goods under outward processing is guilty of an offence if that export clearance declaration does not comply with the requirements of section **447**; or
  - (ii) a home use clearance declaration for outward processing of compensating products is guilty of an offence if that home use clearance declaration does not contain the additional information required in terms of section **455(1)**.
- (2) The importer of goods is guilty of an offence if that person contravenes or fails to comply with section ....

## CHAPTER 20

### CUSTOMS PROCESSING OF PERSONS ENTERING OR LEAVING REPUBLIC

#### Definitions

**463.** In this Chapter –

“**commercial goods**” means items in the accompanied or unaccompanied baggage of a person entering or leaving the Republic that are imported into or exported from the Republic for commercial or other business purposes, and includes –

- (a) items intended –
  - (i) to be sold, leased or otherwise commercially transacted; or
  - (ii) for use in a business or profession; and
- (b) items which by reason of their nature, quantity, volume or other attribute can reasonably be classified as goods intended for commercial or other business purposes;

“**personal effects**” means items (new or used) in the accompanied or unaccompanied baggage of a person entering or leaving the Republic which that person has on or with him or her or takes along for, and reasonably required for, personal or own use, such as any wearing apparel, toilet articles, medicine, personal jewellery, watch, cellular phone, food and drinks and other items evidently on or with that person for personal or own use, but excludes

–

- (a) in relation to a person entering the Republic, any of the above items to the extent that they fall within any of the categories of items that must be declared in terms of section **466(1)**; or
- (b) in relation to a person leaving the Republic, any of the above items to the extent that they fall within any of the categories of items that must be declared in terms of section **471(1)**;

**“tax free allowance”<sup>311</sup> –**

- (a) in relation to a person entering the Republic, the amount specified in a notice issued in terms of section **466**(4); or
- (b) in relation to a person leaving the Republic, the amount specified in a notice issued in terms of section **471**(3);

**“tax free limit”**, in relation to a person entering the Republic, the quantity of a type of goods specified in a notice in terms of section **466**(3) that may imported tax free into the Republic as part of the accompanied or unaccompanied baggage of a person entering the Republic.

**Purpose and application of this Chapter**

**464.** (1) The purpose of this Chapter is to provide for –

- (a) the processing for customs purposes of persons entering or leaving the Republic; and
- (b) such persons to declare their accompanied and unaccompanied baggage.

(2) This Chapter applies to, subject to subsection (3) –

- (a) all persons entering or leaving the Republic, including crew members of a vessel, aircraft, train or vehicle; and
- (b) the accompanied and unaccompanied baggage of such persons.

(3) This Chapter does not apply to –

- (a) persons who entered the Republic on board a foreign-going vessel or aircraft on their way to a destination outside the Republic and who –
  - (i) remain on board the vessel or aircraft which brought them into the Republic until the vessel or aircraft leaves the Republic;
  - (ii) disembark under customs supervision for transfer to another foreign-going vessel or aircraft in which they will leave the Republic; or
  - (iii) disembark for another reason but without leaving the transit area at a place of entry; and
- (b) the accompanied and unaccompanied baggage of such persons that –
  - (i) remain on board the vessel or aircraft which brought the baggage into the Republic until the vessel or aircraft leaves the Republic; or
  - (ii) are transferred under customs supervision to another foreign-going vessel or aircraft in which the baggage will leave the Republic.

***Part 1: Persons entering the Republic***

**Incoming traveller and crew declarations**

<sup>311</sup> Rules under section **6** regulate the tax free allowance of BLNS countries.



- 465.** (1) A person entering the Republic must –
- (a) subject to section **475**, complete, and submit to the customs authority, a declaration containing such personal and travel information, including information concerning that person's accompanied and unaccompanied baggage, as may be prescribed by rule; and
  - (b) declare all items in that person's accompanied or unaccompanied baggage that must be declared in terms of section **466**.

(2) When declaring accompanied baggage items in terms of subsection (1), a person must –

- (a) furnish the customs authority with full particulars concerning those items, including any available invoices and other commercial documents relating to those items; and
- (b) pay any import tax that is payable on any of those items.

(3) Accompanied or unaccompanied baggage items that are not in terms of section **466** required to be declared are exempted from –

- (a) the formalities of this Chapter; and
- (b) the requirement to be cleared in terms of section **104**.<sup>312</sup>

#### **Accompanied and unaccompanied baggage items that must be declared**

**466.** (1) The following items in a person's accompanied or unaccompanied baggage must be declared:

- (a) any items that are commercial goods;
- (b) any items re-imported into the Republic which, at the time of export, were –
  - (i) declared in terms of section **471(1)(b)**; and
  - (ii) cleared and released for export under the temporary export procedure;
- (c) any items imported into the Republic temporarily for later re-exportation from the Republic in an unaltered state;
- (d) any items imported into the Republic temporarily for remodelling, processing, repair or alteration and later re-exportation from the Republic;
- (e) any items consisting of compensating products obtained from goods which, when exported, were –
  - (i) declared in terms of section **471(1)(e)**; and
  - (ii) cleared for outward processing;
- (f) any items that are prohibited, restricted or sectorally controlled goods;
- (g) any items of the types specified in a notice issued in terms of subsection (3)

<sup>312</sup> See section **106(1)(e)**. It also follows that no import tax is payable on these baggage items as no tax is payable on imported goods exempted from clearance formalities. All taxes on imported goods are in terms of the applicable tax levying Acts based on clearance for home use.

in excess of the tax free quantity for the relevant type, excluding any items of the specified types already declared in terms of paragraphs (a) to (f) of this subsection; and

- (h) any items of the types specified in a notice issued in terms of subsection (4) if the combined customs value of those items exceeds the tax free allowance, excluding any items of the specified types already declared in terms of paragraphs (a) to (g) of this subsection.

(2) Items in a person's accompanied or unaccompanied baggage referred to in subsection (1) must be declared whether or not the person entering the Republic is the owner of those items.

(3) The Minister may for purposes of subsection (1)(g), by notice in the Gazette,<sup>313</sup> determine that an item in a person's accompanied baggage of a type of consumable goods specified in the notice may be imported tax free up to a maximum quantity specified in the notice for the relevant type of goods.

(4) The Minister may for purposes of subsection (1)(h), by notice in the Gazette,<sup>314</sup> determine that items in a person's accompanied or unaccompanied baggage of a type of goods specified in the notice may be imported tax free to the extent that the combined customs value of those items does not exceed an amount specified in the notice.

(5) Items in a person's accompanied or unaccompanied baggage that are personal effects are not required to be declared and may be imported tax free.

### **Application of clearance and release procedures to accompanied and unaccompanied baggage items that are declared<sup>315</sup>**

**467.** (1) Section **104** applies to accompanied and unaccompanied baggage items declared in terms of section **466(1)**, and such items must, as may be appropriate, be cleared for home use<sup>316</sup> or the customs procedure applicable to the goods.<sup>317</sup>

<sup>313</sup> Currently done in the Schedules to the Customs and Excise Act and Value Added Tax Act.

<sup>314</sup> Currently done in the Schedules to the Customs and Excise Act and Value Added Tax Act.

<sup>315</sup> In this Act a distinction is drawn between declaring goods and clearing goods. To "**declare**" goods means to disclose the goods and provide any required information concerning the goods to a customs officer. To "**clear**" goods means to formally enter the goods for home use or a customs procedure. See definitions in section 1.

<sup>316</sup> This could be a clearance for home use under Chapter **8** or, in the case of section **466(1)(b)** a clearance for home use under the temporary export procedure, or in the case of section **466(1)(e)**, a clearance for home use under the outward processing procedure.

<sup>317</sup> The appropriate customs procedure would either be temporary admission in the case of section **466(1)(c)** or inward processing in the case of section **466(1)(d)**.

(2) Items in the accompanied or unaccompanied baggage of a person that must in terms of subsection (1) be cleared, may be cleared in accordance with simplified clearance requirements referred to in Part 3 of Chapter 23.

(3) Subsection (1) does not apply to items referred to in section 466(1)(f) and those items must be dealt with in accordance with Chapter 34.

### **Rate of import tax payable on accompanied and unaccompanied baggage items that are declared**

**468.** (1) If any items in the accompanied or unaccompanied baggage of a person declared in terms of section 466(1) attract import tax in terms of a tax levying Act, the rate at which those items attract import tax must be determined in accordance with that Act, subject to subsection (2).<sup>318</sup>

(2) A person may in stead of paying an amount of import tax determined in accordance with subsection (1) on any items in his or her accompanied or unaccompanied baggage declared in terms of section 466(1)(h), elect to pay import tax on those items as follows:<sup>319</sup>

- (a) items selected by that person of which the combined customs value is within the tax free allowance: no import tax payable on those items;
- (b) items selected by that person from items not already selected in terms of paragraph (a), of which the combined customs value does not exceed an upper limit determined by the Minister by notice in the Gazette: import tax payable on those items at a flat rate of import tax determined by the Minister by notice in the Gazette; and
- (c) items selected by that person from the remaining items, of which the combined customs value exceeds the upper limit referred to in paragraph (b): import tax payable on those items at the rates payable in terms of the applicable tax levying Acts.

### **Place where incoming traveller and crew declarations must be submitted**

**469.** Section 465(1) and (2) must be complied with –

- (a) in the case of a person who entered the Republic in a foreign-going vessel, at the customs seaport where that person disembarks from the vessel;
- (b) in the case of a person who entered the Republic in a foreign-going aircraft, at the customs airport where that person disembarks from the aircraft;

<sup>318</sup> This applies to all accompanied baggage items declared in terms of section 466(1) and cleared in terms of section 467 for home use.

<sup>319</sup> It is to be noted that this subsection only applies to items of the types specified in the notice issued in terms of section 466(4) and that are declared in terms of section 466(1)(h).

- (c) in the case of a person who entered the Republic in a cross-border railway carriage, at the rail traveller terminal where that person disembarks from the railway carriage; or
- (d) in the case of a person who entered the Republic in a vehicle or on foot, at the land border-post where the person entered the Republic.

## ***Part 2: Persons leaving the Republic***

### **Outgoing traveller and crew declarations**

**470.** (1) A person in the process of leaving the Republic must –

- (a) subject to section **475**, complete and submit to the customs authority a declaration containing such personal and travel information, including information concerning that person's accompanied or unaccompanied baggage, as may be prescribed by rule; and
- (b) declare all items in that person's accompanied or unaccompanied baggage that must be declared in terms of section **471**.

(2) When declaring accompanied or unaccompanied baggage items in terms of subsection (1), a person must –

- (a) furnish the customs authority with full particulars concerning those items, including any available invoices and other commercial documents relating to those items; and
- (b) pay any export tax that is payable on any of those items.

(3) Accompanied or unaccompanied baggage items that are not in terms of section **471** required to be declared are exempted from –

- (a) the formalities of this Chapter; and
- (b) the requirement to be cleared in terms of section **108**.<sup>320</sup>

### **Accompanied and unaccompanied baggage items that must be declared**

**471.** (1) The following items in a person's accompanied or unaccompanied baggage must be declared:

- (a) any items that are commercial goods;
- (b) any items to be exported from the Republic temporarily for later re-importation into the Republic in an unaltered state;
- (c) any items previously imported into the Republic which, at the time of import –
  - (i) were declared in terms of section **466(1)(c)**; and
  - (ii) cleared and released for the temporary admission procedure;

<sup>320</sup> See section **110(1)(f)**. It also follows that no export tax is payable on these baggage items as no tax is payable on goods destined for export that are exempted from clearance formalities.

- (d) any items consisting of compensating products obtained from goods which, when imported –
  - (i) were declared in terms of section **466(1)(d)**; and
  - (ii) cleared and released for the inward processing procedure;
- (e) any items to be exported from the Republic temporarily for remodelling, processing, repair or alteration abroad and later re-importation into the Republic;
- (f) any items that are prohibited, restricted or sectorally controlled goods; and
- (g) any items of the types specified in a notice issued in terms of subsection (3) if the combined customs value of those items exceeds the export tax free allowance, excluding any items of the specified types already declared in terms of paragraphs (a) to (f) of this subsection.

(2) Items in a person's accompanied or unaccompanied baggage referred to in subsection (1) must be declared whether or not the person leaving the Republic is the owner of those items.

(3) The Minister may for purposes of subsection (1)(g), by notice in the Gazette, determine that items in a person's accompanied or unaccompanied baggage of a type of goods specified in the notice may be exported from the Republic export tax free to the extent that the combined value of those items does not exceed an amount specified in the notice.<sup>321</sup>

(4) Items in a person's accompanied or unaccompanied baggage that are personal effects are not required to be declared.

### **Application of clearance and release procedures to accompanied and unaccompanied baggage items that are declared**<sup>322</sup>

**472.** (1) Section **108** applies to accompanied and unaccompanied baggage items declared in terms of section **471(1)**, and such items must be cleared for export.<sup>323</sup>

(2) Items in the accompanied or unaccompanied baggage of a person that must in terms of subsection (1) be cleared, may be cleared in accordance with simplified clearance requirements referred to in Part **3** of Chapter **23**.

<sup>321</sup> This subsection can obviously be applied only if a tax on the export of goods has been imposed in terms of a tax levying Act.

<sup>322</sup> In this Act a distinction is drawn between declaring goods and clearing goods. To "**declare**" goods means to disclose the goods and provide any required information concerning the goods to a customs officer. To "**clear**" goods means to formally enter the goods for home use or a customs procedure. See definitions in section **1**.

<sup>323</sup> This could be clearance for outright export or for export under the temporary export procedure, in the case of section **471(1)(b)**, the temporary admission procedure, in the case of section **471(1)(c)**, the inward processing procedure in the case of section **471(1)(d)**, and the outward processing procedure, in the case of section **471(1)(e)**.

(3) Subsection (1) does not apply to items referred to in section 471(1)(f) and those items must be dealt with in accordance with Chapter 34.

### **Rate of export tax payable on accompanied and unaccompanied baggage that are declared**

**473.** (1) If any items in the accompanied or unaccompanied baggage of a person declared in terms of section 471(1) attract export tax in terms of a tax levying Act, the rate at which those items attract export tax must be determined in accordance with that Act, subject to subsection (2).<sup>324</sup>

(2) A person may instead of paying an amount of export tax determined in accordance with subsection (1) on any items in his or her accompanied or unaccompanied baggage declared in terms of section 471(1)(g), elect to pay export tax on those items as follows:<sup>325</sup>

- (a) items selected by that person of which the combined customs value is within the export tax free allowance: no export tax payable on those items;
- (b) items selected by that person from items not already selected in terms of paragraph (a), of which the combined customs value does not exceed an upper limit determined by the Minister by notice in the Gazette: export tax payable on those items at a flat rate of tax determined by the Minister by notice in the Gazette; and
- (c) items selected by that person from the remaining items, of which the combined customs value exceeds the upper limit referred to in paragraph (b): export tax payable on those items at the rates payable in terms of the applicable tax levying Acts.

### **Place where outgoing traveller and crew declarations must be submitted**

**474.** Section 470(1) and (2) must be complied with –

- (a) in the case of a person who will leave the Republic in a foreign-going vessel, at the customs seaport where that person boards the vessel;
- (b) in the case of a person who will leave the Republic in a foreign-going aircraft, at the customs airport where that person boards the aircraft;
- (c) in the case of a person who will leave the Republic in a cross-border railway carriage, at the rail traveller terminal where that person boards the railway carriage; or
- (d) in the case of a person who will leave the Republic in a vehicle or on foot, at the land border-post where the person will leave the Republic.

<sup>324</sup> This applies to all baggage items declared in terms of section 471(1) and cleared in terms of section 472 for outright export.

<sup>325</sup> It is to be noted that this subsection only applies to items of the types specified in the notice issued in terms of section 466(3) and that are declared in terms of section 471(1)(g).

**Part 3: Other matters**

**Channel or other system**

**475.** (1) The Commissioner may by rule prescribe a channel or other customs processing system to facilitate the processing at places of entry or exit of persons entering or leaving the Republic.

(2) In terms of such a system –

- (a) persons who have items in their accompanied baggage that must be declared in terms of section **466** or **471**, must be processed separately from persons who do not have any items in their accompanied baggage that must be declared; and
- (b) persons who do not have any items in their accompanied baggage that must be declared in terms of section **466** or **471**, must be allowed to proceed without customs formalities unless a customs officer intervenes in terms of this Act.

(3) Unless the customs authority demands otherwise in relation to a specific person –

- (a) section **465(1)(a)** need not be complied with at a place of entry where a channel system is in force; and
- (b) section **470(1)(a)** need not be complied with at a place of exit where a channel system is in force.

**Rules to facilitate implementation of this Chapter**

**476.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) processes and timeframes for declaring items in the unaccompanied baggage of a person entering or leaving the Republic, and the handling and storage of such items;
- (b) .....

**Offences in terms of this Chapter**

**477.** (1) A person entering the Republic is guilty of an offence if that person contravenes or fails to comply with section **465(1)** or (2).

(2) A person in the process of leaving the Republic is guilty of an offence if that person contravenes or fails to comply with section **470(1)** or (2).

**CHAPTER 21**  
**INTERNATIONAL POSTAL ARTICLES HANDLED BY SOUTH AFRICAN POST**  
**OFFICE**

***Part 1: Introductory provisions***

**Purpose and application of this Chapter**

- 478.** (1) The purpose of this Chapter is to regulate –
- (a) the clearance and release of international postal articles handled by the South African Post Office;
  - (b) the handling and inspection of such international postal articles for customs purposes; and
  - (c) the assessment of tax on such international postal articles.
- (2) This Chapter applies only to international postal articles –
- (a) imported into the Republic for –
    - (i) delivery in the Republic by the South African Post Office; or
    - (ii) transit to another country through the South African Post Office; or
  - (b) posted in the Republic for export from the Republic through the South African Post Office.<sup>326</sup>

**Prohibited, restricted or sectorally controlled goods**

- 479.** Chapter 34 applies if an international postal article consists of or contains prohibited, restricted or sectorally controlled goods.

***Part 2: Clearance and release of international postal articles***

**Clearance of imported international postal articles**

- 480.** (1) Imported international postal articles that are not in terms of section 106 exempted from clearance requirements for imported goods, must be cleared for home use or a permissible customs procedure as required by section 104. The provisions of this Act regulating the clearance and release of imported goods apply to the clearance and release of imported international postal articles, subject to subsections (2) and (3).

(2) If an international postal article with a customs value not exceeding an upper limit prescribed by the Minister by notice in the *Gazette* is to be cleared for home use under Chapter 8, the postal declaration accompanying that postal article in terms of section 484 must for purposes of the clearance be regarded to be a clearance declaration for home use under Chapter 8.

<sup>326</sup> As this Chapter applies only to international postal articles handled by the South African Post Office, international postal articles imported or exported through private couriers must be treated as ordinary imported or exported goods.



(3) International postal articles cleared for home use in accordance with the simplified clearance process provided for in subsection (2) may be exempted by rule from any other provision of this Act applicable to the clearance or release of goods for home use.

### **Clearance of international postal articles destined for export**

**481.** (1) International postal articles destined for export from the Republic that are not in terms of section **110** exempted from clearance requirements for goods destined for export, must be cleared for export as required by section **108**. The provisions of this Act regulating the clearance and release of goods destined for export apply to the clearance and release of international postal articles destined for export, subject to subsections (2), (3) and (4).

(2) If an international postal article with a customs value not exceeding an upper limit prescribed by the Minister by notice in the *Gazette* is to be cleared for outright export, the postal declaration accompanying that postal article in terms of section **484** must for purposes of the clearance be regarded to be a clearance declaration for outright export under the export procedure.<sup>327</sup>

(3) The simplified clearance process provided for in subsection (2) does not apply if the exporter of a postal article intends to apply in terms of Chapter **4** of the Customs Duty Act for a drawback of duty exceeding R100.

(4) International postal articles cleared for outright export in accordance with the simplified clearance process provided for in subsection (2) may be exempted by rule from any other provision of this Act applicable to the clearance or release of goods for outright export.

### ***Part 3: Customs processing of international postal articles***

#### **Removal of international postal articles to international postal clearance depots**

**482.** All international postal articles must be removed to a licensed international postal clearance depot before –

- (a) delivered in the Republic, in the case of international postal articles imported for delivery in the Republic; or
- (b) exported from the Republic, in the case of international postal articles posted in the Republic for delivery outside the Republic.

<sup>327</sup> This simplified clearance process would not apply if the postal article is to be exported in terms of a customs procedure other than outright export, such as temporary export.

### **Presentation of international postal articles to customs authority**

**483.** The South African Post Office must present all international postal articles handled by it at a licensed international postal clearance depot to the customs authority at that depot, except postal articles excluded from clearance requirements in terms of section **106(1)(i)** or **110(1)(j)**.

### **Postal declarations to accompany international postal articles presented to customs authority**

**484.** (1) When an international postal article referred to in section **483** is presented to the customs authority, the article must be accompanied by a postal declaration completed by or on behalf of the consignor of the postal article.

- (2) A postal declaration in terms of subsection (1) must –
- (a) be on a form as may be prescribed by rule and contain the information required on the form;
  - (b) signed and dated by the declarant; and
  - (c) be supported by such supporting documents as may be prescribed by rule.

### **Customs authority's functions in relation to international postal articles presented to it**

**485.** (1) When international postal articles are presented to the customs authority at a licensed international postal clearance depot, a customs officer must promptly –

- (a) separate –
  - (i) postal articles that are taxable<sup>328</sup> from those that are not; and
  - (ii) postal articles that are or contain prohibited, restricted or sectorally controlled goods from other postal articles;
- (b) release non-taxable postal articles which are not prohibited, restricted or sectorally controlled goods, to the South African Post Office for delivery in the Republic or for export from the Republic, as the case may be;
- (c) deal with prohibited, restricted or sectorally controlled goods in accordance with Chapter **34**;
- (d) assess any import or export tax payable on taxable postal articles in accordance with any applicable tax levying Act; and
- (e) release any tax assessed postal articles to the South African Post Office for –
  - (i) collection on behalf of the Commissioner of any assessed import or export tax due; and
  - (ii) delivery in the Republic or export from the Republic, as the case may be.

<sup>328</sup> See definition of “taxable” in section 1.

(2) The South African Post Office is in respect of each international postal article that it presents to the customs authority in terms of this section entitled to recover from the addressee or consignor a presentation and clearance fee prescribed by rule in order to offset the costs incurred by it in performing the service on behalf of the addressee or consignor.

***Part 4: Payment of import or export tax on international postal articles***

**Release of international postal articles**

**486.** No international postal article assessed by the customs authority and on which any import or export tax is payable may be delivered to the addressee or exported by the South African Post Office before the tax payable on the postal article has been paid.

**Payment of tax on international postal articles**

**487.** (1) Any import tax payable on an international postal article being cleared for home use in terms of Chapter 8 in accordance with –

- (a) regular clearance requirements referred to in section 480(1), must be paid to the Commissioner by the person responsible in terms of the applicable tax levying Act for payment of the tax; or
- (b) the simplified clearance process provided for in section 480(2), must be paid to the South African Post Office as collecting agent of the Commissioner by the person in the Republic to whom the postal article is addressed.

(2) Any export tax payable on an international postal article being cleared under the export procedure for outright export in accordance with –

- (a) regular clearance requirements referred to in section 481(1), must be paid to the Commissioner by the person responsible in terms of the applicable tax levying Act for payment of the tax; or
- (b) the simplified clearance process provided for in section 481(2), must be paid to the South African Post Office as collecting agent of the Commissioner by the person in the Republic who consigns the postal article for export through the South African Post Office.

(3) The South African Post Office is for purposes of this Act the collecting agent of the Commissioner for import and export tax referred to in subsection (1)(b) and (2)(b).

**Time when tax becomes payable and rate of tax**

**488.** (1) Import or export tax on an international postal article –

- (a) becomes payable when the customs authority has assessed the tax on the postal article in terms of section 485; and

- (b) must be paid before the postal article is delivered to the consignee or exported, as the case may be.

(2) The rate at which import or export tax is payable on an international postal article is the rate applicable at the time of the assessment, subject to the applicable tax levying Act.<sup>329</sup>

#### **Payment of tax to the customs authority**

**489.** (1) The South African Post Office must –

- (a) on a daily basis pay over to the Commissioner the import or export tax that it collected the previous day; or
- (b) if an agreement referred to in subsection (2) has been entered into between the Commissioner and the South African Post Office, pay over to the Commissioner the tax that it collected at regular intervals as agreed.

(2) The Commissioner may enter into a written agreement with the South African Post Office on –

- (a) the collection by the South African Post Office of tax payable on international postal articles;
- (b) the payment of the tax that it collected to the Commissioner at such regular intervals as may be agreed; and
- (c) the manner in, and the intervals at, which the South African Post Office must report to the Commissioner on tax collected by it on international postal articles.

#### **Cancellation and repayments of tax**

**490.** (1) The Commissioner may, at the request of the South African Post Office and subject to such conditions as the Commissioner may determine, cancel any import or export tax due on an international postal article, or repay to the South African Post Office any import or export tax already paid by it to the Commissioner on an international postal article, if the postal article, whilst under the control of the South African Post Office, was –

- (a) destroyed;
- (b) abandoned;
- (c) not collected;
- (d) refused by the addressee;
- (e) not delivered to the addressee;
- (f) returned to the sender;
- (g) re-directed to a third country; or

<sup>329</sup> See for instance section 81 of the Customs Duty Act.

(h) not exported from the Republic.

(2) Postal articles referred to in subsection (1)(b), (c) or (d) must be dealt with in accordance with the Post Office Act.

(3) Chapter 4 of the Customs Duty Act does not apply to the repayment of duty to the South African Post Office in terms of subsection (1).

### **Condonation of underpayments**

**491.** The Commissioner may condone any underpayment of import or export tax on an international postal article if the amount of the underpayment is less than R50.

### ***Part 5: Inspection of international postal articles***

#### **Enforcement to be consistent with this Part**

**492.** When performing an enforcement function in relation to international postal articles a customs officer must perform that function in a manner consistent with this Part.

#### **Opening of international postal articles**

**493.** A customs officer may open an international postal article only if necessary –

- (a) to retrieve any invoice or consignment-related information contained inside the postal article;
- (b) to compare the contents of the postal article with the description, quantity, tariff heading, value and any other information reflected on the postal declaration made in respect of the postal article in terms of section **484**;
- (c) to assess whether the postal article is subject to the payment of any import or export tax;
- (d) to determine whether the postal article is or contains prohibited, restricted or sectorally controlled goods; or
- (e) to carry out any other enforcement function provided for in this Act.

#### **Personal or private communications**

**494.** (1) No customs officer may –

- (a) open any international postal article that weighs 30 grams or less, unless the customs officer on reasonable grounds suspects that the postal article contains prohibited, restricted or sectorally controlled goods;
- (b) read, copy or make an extract from any personal or private communication found in any international postal article opened in terms of section **493** if reading, copying or

making an extract from that communication is not necessary for the enforcement of this Act or a tax levying Act; or

- (c) disclose any personal or private communication found in any international postal article opened in terms of section **493** otherwise than for a purpose permitted in terms of Part **5** of Chapter **1**.

(2) For the purpose of this section a personal or private communication does not include –

- (a) an invoice;
- (b) an order form;
- (c) a cheque;
- (d) a newspaper, magazine, book, catalogue or similar printed matter;
- (e) a blank form; or
- (f) any other communication as may be prescribed by rule.

#### **Notifications that international postal articles have been opened**

**495.** (1) When opening an international postal article a customs officer must affix a notification to the postal article informing the addressee that the postal article has been opened and inspected by a customs officer.

(2) An opening notification must contain the information and be affixed in a manner as may be prescribed by rule.

(3) The customs authority may dispense with subsection (1) if disclosure of the fact that an international postal article has been opened may obstruct the investigation of serious crime.

#### **Seizure and confiscation of international postal articles**

**496.** (1) An international postal article is subject to seizure and confiscation by the customs authority in terms of Chapter **33** if that postal article or its contents is found to be not in accordance with –

- (a) the clearance declaration submitted in respect of that postal article; or
- (b) the postal declaration accompanying that postal article in terms of section **484**.

(2) Subsection (1) does not apply to closed international postal articles conveyed by or for the South African Post Office under an international consignment document for purposes of international transit.<sup>330</sup>

<sup>330</sup> See section **204**.

**Part 6: Other matters**

**Conclusion of agreements**

**497.** The Commissioner may conclude any agreement with the South African Post Office in order to –

- (a) improve the ability of each party to fully execute their respective functions;
- (b) enhance the level of co-operation between the parties;
- (c) secure and expedite the clearance and release of international postal articles;
- (d) enhance security relating to international postal articles and the detection of prohibited, restricted and sectorally controlled goods;
- (e) facilitate the exchange of information between the SARS and the South African Post Office and the use of information technology with regard to the clearance and release of international postal articles; and
- (f) provide for any other matters that may be required in order to control the movement of goods by international post.

**Rules to facilitate implementation of this Chapter**

**498.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) customs processing of international postal articles at licensed international postal clearance depots;
- (b) measures for –
  - (i) combating tax evasion in relation to goods sent by post;
  - (ii) the detection of prohibited, restricted and sectorally controlled goods sent by post;

**CHAPTER 22**

**ACCESS TO AND SAMPLING OF GOODS<sup>331</sup>**

**Purpose of this Chapter**

**499.** (1) The purpose of this Chapter is to provide for persons having an interest in goods that are subject to customs control, to access and to take samples of the goods.

(2) This Chapter may not be read as affecting –

- (a) the enforcement functions of customs officers in terms of this Act; or

<sup>331</sup> See section **709** for sampling of goods by customs, whether or not as part of an inspection.

- (b) the powers of any law enforcement agency or other persons accessing or taking samples of goods in terms of any legislation for the purpose of enforcing that legislation.

### **Right of access to and taking samples from goods**

**500.** (1) Whilst goods are subject to customs control, a person who clears or who is entitled to clear the goods, or a person who acts on behalf of such a person, is after notice to the customs authority entitled –

- (a) to access the goods; and
- (b) to take samples of the goods.

(2) Samples may in terms of subsection (1) be taken –

- (a) for establishing or verifying –
  - (i) the nature or characteristics of the goods;
  - (ii) the quality or content of the goods;
  - (iii) the tariff classification, customs value or origin of the goods; or
  - (iv) any other fact in relation to the goods as may be prescribed by rule;
- (b) for use as –
  - (i) evidence in a court or other proceedings referred to in Chapter **36**; or
  - (ii) trade samples; or
- (c) for any other purpose as may be –
  - (i) prescribed by rule; or
  - (ii) approved by the customs authority in a specific case.

(3) Samples taken in terms of subsection (1) may be –

- (a) examined, analysed or tested in any way;
- (b) subjected to a chemical, mechanical or technological process;
- (c) used for obtaining advice, including expert or technical advice, on the goods as reflected by the samples or a matter relating to the goods; or
- (d) utilised in any other way necessary for achieving any of the purposes of subsection (2).

(4) Samples may be taken from goods in terms of subsection (1) without formally clearing the samples for home use or a customs procedure, subject to section **501** or **502**.

(5) Access to and sampling of goods in terms of subsection (1) must take place under supervision of a customs officer, if the customs authority so requires.<sup>332</sup>

<sup>332</sup> For access to goods by interested persons during customs inspection, see section **739**.



### **Samples of imported goods**

**501.** (1) Samples taken in terms of section **500** of imported goods must for tax and all other purposes be regarded to be cleared for home use under Chapter **8**<sup>333</sup> if those samples are taken from the goods –

- (a) before the goods are cleared for home use or a customs procedure in terms of section **104**; or
- (b) whilst the goods are under a customs procedure.

(2) Samples taken in terms of section **500** of imported goods already cleared for home use do not affect the amount of any tax paid or payable on the goods.

### **Samples of goods in free circulation cleared for export under export procedure**

**502.** (1) Samples taken in terms of section **500** of goods that are cleared for export under the export procedure must for tax purposes and all other purposes be regarded to have reverted to free circulation if –

- (a) those goods were in free circulation before being cleared for export; and
- (b) those samples are taken of the goods before being exported from the Republic.

(2) If samples are in terms in terms of subsection (1) regarded as having reverted to free circulation section **160** becomes applicable to those samples.

### **Rules to facilitate implementation of this Chapter**

**503.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) processes and requirements for gaining access to and taking samples from goods;
- (b) customs supervision over persons when accessing and taking of samples from goods;

### **Offences in terms of this Chapter**

**504.** A person referred to in section **500**(1) is guilty of an offence if that person takes samples of any goods otherwise than in accordance with this Chapter.

## **CHAPTER 23**

### **EXPEDITED CLEARANCE AND RELEASE OF GOODS**<sup>334</sup>

<sup>333</sup> For tax status of samples taken from imported goods, see section **154**.

<sup>334</sup> Expedited procedures for accredited persons dealt with in Rules under Chapter **29**. The use of specific

### **Purpose of this Chapter**

**505.** The purpose of this Chapter is to provide for –

- (a) the clearance and release of goods for home use or a permissible customs procedure on submission of incomplete or provisional clearance information;
- (b) the release of goods for home use or a permissible customs subject to subsequent clearance; and
- (c) the clearance and release of goods for home use or a permissible customs procedure in accordance with simplified clearance requirements.

### **Other clearance and release provisions of Act to apply except insofar as provided otherwise in this Chapter**

**506.** (1) The other provisions of this Act applicable to the clearance and release of goods for home use or a customs procedure apply to the clearance and release of goods for home use or such a customs procedure in terms of this Chapter except to the extent that those other provisions are modified, qualified or deviated from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and another provision of this Act, the provision of this Chapter prevails.

### **Tax status of goods not affected when cleared in terms of this Chapter**

**507.** The clearance of goods in terms of this Chapter for home use or a customs procedure does not affect the tax status of the goods had the goods been cleared for home use or that customs procedure in terms of regular clearance requirements.

### ***Part 1: Clearance and release of goods on incomplete or provisional clearance information***

#### **Goods to which this Part may be applied**

**508.** Any goods may be cleared and released for home use or a customs procedure in terms of this Part.

#### **Application to clear and obtain release of goods on incomplete or provisional clearance information**

**509.** (1) The customs authority may, on application by a person entitled to clear goods for home use or a specific customs procedure<sup>335</sup> and who does not have all the information or documents at hand to submit a regular clearance declaration for the clearance of the goods, allow that person –

commercial documents and carnets as clearance declarations covered in Chapters on customs procedures where they are permissible.

<sup>335</sup> See section 165.

- (a) to clear the goods for home use or that customs procedure in terms of an incomplete or provisional clearance declaration; and
- (b) to obtain release of the goods on acceptance by the customs authority of the incomplete or provisional clearance declaration.

(2) An application in terms of subsection (1) –

- (a) may be in respect of –
  - (i) a specific parcel or consignment of goods; or
  - (ii) a specific category or kind of goods to be cleared by the relevant person during a specific period;<sup>336</sup> and
- (b) must be submitted to the customs authority in accordance with requirements and within timeframes as may be prescribed by rule, provided that –
  - (i) submission within the prescribed timeframe of an incomplete or provisional clearance declaration covering a specific parcel or consignment of goods without first obtaining the customs authority's permission in terms of subsection (1) to clear the goods in terms of an incomplete or provisional clearance declaration, may be regarded to be an application referred to in that subsection; and
  - (ii) acceptance by the customs authority of the incomplete or provisional declaration may be regarded to be an approval of the application.

(3) Approval of an application in terms of subsection (1) is subject to such conditions as may be prescribed by rule or as the customs authority may determine in a specific case, which may include conditions –

- (a) requiring security to cover any risks in relation to tax payable or that may become payable on the goods; and
- (b) determining special requirements for securing the handling, movement, storage or use of the goods until full and final clearance of the goods in terms of section **513**.

(4) The customs authority may refuse an application in terms of subsection (1) –

- (a) if approving the application may put the payment or collection of tax or compliance with an applicable provision of this Act or a tax levying Act at risk; or
- (b) on any other good ground.

### **Contents of incomplete clearance declarations**

**510.** (1) Except when the customs authority determines otherwise, an incomplete clearance declaration must at least state –

<sup>336</sup> For instance bulk goods in consecutive consignments.

- (a) whether the goods are cleared for home use or a customs procedure, and if for a customs procedure, the desired customs procedure;
- (b) in the case of goods already under a customs procedure,<sup>337</sup> the reference number of the clearance declaration for that customs procedure;
- (c) in the case of imported goods (other than imported goods under a customs procedure), the date of actual or expected arrival of the goods, as may be applicable, at a place referred to in section **105**;
- (d) a sufficiently precise description of the goods to determine the tariff classification of the goods;
- (e) the quantity of the goods;
- (f) the value of the goods;
- (g) the name and physical address of the person submitting the declaration, or, if submitted by a customs broker acting in terms of section **165(1)(b)** –
  - (i) the customs code of the customs broker; and
  - (ii) the customs code or the name and physical address of the principal on whose behalf the declaration is submitted;
- (h) the number and date of the transport document issued in respect of the goods; and
- (i) such additional information as may be prescribed by rule or as the customs authority may determine in a specific case, including information that may be needed to –
  - (i) calculate the amount of security that may be required in respect of the goods;
  - (ii) identify the goods and achieve effective customs control over the goods; and
  - (iii) release the goods.

(2) An incomplete clearance declaration must be supported by at least the supporting documents as may be prescribed by rule or as the customs authority may determine in a specific case.

### **Contents of provisional clearance declarations**

**511.** (1) A provisional clearance declaration for home use or a customs procedure must –

- (a) contain all the information required to be included in a regular clearance declaration for home use or that customs procedure, as the case may be; and
- (b) indicate which of the information are included provisionally pending subsequent confirmation or correction.

(2) A provisional clearance declaration must in respect of information not included provisionally, be supported by supporting documents required in terms of this Act.

<sup>337</sup> See section **125**.

**Release of goods cleared in terms of incomplete or provisional clearance declarations**

**512.** (1) Goods that are cleared in terms of a incomplete or provisional clearance declaration must, subject to the provisions of this Act regulating the release of goods, be released as if the goods were cleared in terms of a regular clearance declaration.

(2) The customs authority may, in addition to any other grounds on which the release of goods may or must be refused, refuse to release the goods if a condition referred to in section **509(3)** applicable to the goods is not met.

**Supplementary clearance declarations**

**513.** (1) A person clearing goods in terms of an incomplete or provisional clearance declaration is not absolved from full and final clearance of the goods and must within a timeframe as may be prescribed by rule from the date of acceptance<sup>338</sup> by the customs authority of the incomplete or provisional clearance declaration, submit to the customs authority a supplementary clearance declaration in relation to those goods.

- (2) A supplementary clearance declaration must –
- (a) supplement –
    - (i) the incomplete clearance declaration to which it relates by providing all the information required for a regular clearance that was not included in the incomplete clearance declaration; or
    - (ii) the provisional clearance declaration to which it relates by confirming or correcting all the information in the provisional clearance declaration that was included provisionally;
  - (b) be supported by all outstanding supporting documents;
  - (c) state the reference number of the incomplete or provisional clearance declaration to which it relates; and
  - (d) be submitted to the same Customs Office where the incomplete or provisional clearance declaration to which it relates was submitted, if the incomplete or provisional clearance declaration was submitted manually.

(3) A period referred to in subsection (1) may in terms of section **875** not be extended by more than seven calendar days.

(4) A supplementary clearance declaration and the incomplete or provisional clearance declaration to which it relates must for the purposes of this Act and any applicable

<sup>338</sup> See section 171.

tax levying Act be regarded to constitute a single indivisible clearance declaration taking effect on the date when the incomplete or provisional clearance declaration is submitted to the customs authority.

#### **Tax payable in respect of goods cleared in terms of this Part**

**514.** (1) Any import or export tax payable on goods that are cleared in terms of this Part must be –

- (a) assessed when the supplementary clearance declaration submitted in terms of section **513(1)** in respect of the goods is accepted by the customs authority in terms of section **171**; and
- (b) paid on demand following such assessment, unless payment of the tax is deferred in terms of the applicable tax levying Act.

(2) Unless the applicable tax levying Act determines otherwise, the rate of tax applicable to the goods is the rate applicable as at date of acceptance by the customs authority of the incomplete or provisional clearance declaration.

#### **Application of this Part to restricted and sectorally controlled goods**

**515.** When applying this Part to –

- (a) restricted goods, section **765** must be complied with when the incomplete or provisional clearance declaration is submitted to the customs authority; or
- (b) sectorally controlled goods, such application does not affect compliance with section **775**.

### ***Part 2: Release of goods subject to subsequent compliance with clearance requirements***

#### **Goods to which this Part may be applied**

**516.** Any goods may be released and subsequently cleared in terms of this Part, excluding restricted and sectorally controlled goods.

#### **Application for expedited release**

**517.** (1) The customs authority may, on application by a person entitled to clear goods for home use or a specific customs procedure and who desires expedited release of the goods but cannot immediately comply with the clearance requirements, release the goods to that person for home use or that customs procedure on condition that a regular clearance declaration be submitted to the customs authority after the release of the goods.

(2) An application in terms of subsection (1) must be submitted to the customs

authority in accordance with requirements and within timeframes as may be prescribed by rule.

- (3) An application referred to in subsection (1) may only be granted –
- (a) if the person requiring release of the goods –
- (i) provides sufficient reasons why –
    - (aa) expedited release of the goods is required; and
    - (bb) the clearance requirements cannot be complied with immediately;
  - (ii) submits minimum information on the goods concerned, as may be prescribed by rule or as the customs authority may determine in a specific case;
  - (iii) undertakes to submit a regular clearance declaration within a period referred to in section **518** after the release of the goods; and
  - (iv) complies with any other requirements as may be prescribed by rule or determined by the customs authority in a specific case; and
- (b) if approval of the application will not put the payment or collection of tax or compliance with an applicable provision of this Act or a tax levying Act at risk.

(4) Approval of an application referred to in subsection (1) is subject to such conditions as may be prescribed by rule or as the customs authority may determine in a specific case, which may include conditions –

- (a) requiring security to cover any risks in relation to tax payable or that may become payable on the goods; and
- (b) determining special requirements for securing the handling, movement, storage or use of the goods until the goods are cleared in terms of section **518**.

### **Subsequent submission of clearance declarations**

**518.** The person who obtained release of goods in terms of section **517** for home use or a customs procedure must submit to the customs authority a regular clearance declaration to clear the goods for home use or that customs procedure within a period after the release of the goods as may be prescribed by rule or as the customs authority may determine in a specific case.

### **Tax payable in respect of goods released in terms of this Part**

**519.** (1) Any import or export tax payable on goods released in terms of section **517** must be –

- (a) assessed when the regular clearance declaration submitted in terms of section **518** in respect of those goods is accepted by the customs authority in terms of section **171**; and

- (b) paid on demand following such assessment, unless payment of the tax is deferred in terms of the applicable tax levying Act.

(2) Unless the applicable tax levying Act determines otherwise, the rate of tax applicable to the goods is the rate applicable as at date of acceptance by the customs authority of the regular clearance declaration.

### ***Part 3: Simplified clearance and release of goods***

#### **Goods to which this Part may be applied**

**520.** (1) Any goods falling within any of the following categories may be cleared and released for home use or a customs procedure in accordance with this Part:

- (a) accompanied or unaccompanied baggage items that may in terms of section **467(2)** or **472(2)** be cleared for home use or a customs procedure in accordance with this Part;
- (b) means of transport that may in terms of –
- (i) sections **255, 256** or **257** be cleared and released in accordance with this Part for the temporary admission procedure or in terms of sections **261, 262** or **263** for export under that procedure;
- (ii) sections **368, 369** or **370** be cleared and released in accordance with this Part for the temporary export procedure or in terms of sections **376, 377** or **378** for home use under that procedure;
- (c) any other category of goods as may be prescribed by rule, subject to subsection (2).

(2) Goods falling within a category of goods prescribed by rule in terms of subsection (1)(c) may not be cleared and released in terms of this Part if –

- (a) the customs value of the goods exceeds an amount determined by the Minister by notice in the Gazette;
- (b) the goods are liable in terms of a tax levying Act to tax exceeding an amount determined by the Minister by notice in the Gazette; or
- (c) the goods consist of international postal articles imported or exported through the South African Post Office Limited.<sup>339</sup>

(3) The customs authority may despite subsections (1) and (2) allow any specific consignment of goods which does not fall within a category referred to in subsection (1) or which is excluded in terms of subsection (2), to be cleared and released in terms of this Part.

<sup>339</sup> Non-commercial international postal articles imported or exported through the South African Post Office Limited are in terms of sections **106(1)(i)** and **110(1)(j)** excluded from clearance requirements. Other international postal articles imported or exported through the South African Post Office Limited must be cleared in terms of Chapter **21**.



### **Application for simplified clearance**

**521.** (1) The customs authority may, on application by a person entitled to clear goods for home use or a specific customs procedure,<sup>340</sup> allow that person –

- (a) to clear the goods for home use or that customs procedure in accordance with simplified clearance procedures as may be prescribed by rule; and
- (b) to obtain release of the goods on acceptance by the customs authority of a simplified clearance declaration or another document that may be used as a clearance declaration in terms of such simplified clearance requirements.

(2) An application in terms of subsection (1) –

- (a) may be in respect of –
  - (i) a specific parcel or consignment of goods; or
  - (ii) a specific category or kind of goods to be cleared by the relevant person during a specific period; and
- (b) must be submitted to the customs authority in accordance with requirements and within timeframes as may be prescribed by rule, provided that –
  - (i) submission within the prescribed timeframe of a simplified clearance declaration or another document referred to in subsection (1)(b) covering a specific parcel or consignment of goods without first obtaining the customs authority's permission in terms of subsection (1), may be regarded to be an application referred to in that subsection; and
  - (ii) acceptance by the customs authority of the simplified clearance declaration or other document may be regarded to be an approval of the application.

(3) The customs authority may refuse an application in terms of subsection (1) –

- (a) if approving the application may put the payment or collection of tax or compliance with an applicable provision of this Act or a tax levying Act at risk; or
- (b) on any other good ground.

(4) The requirement of prior application does not apply to a person clearing goods referred to in section **520**(1)(a) or (b), and such a person may –

- (a) summarily clear the goods for home use or the relevant customs procedure in accordance with the simplified clearance requirements referred to in subsection (1); and

<sup>340</sup> See section **159**.

- (b) obtain release of the goods on acceptance by the customs authority of a simplified clearance declaration or another document that may be used as a clearance declaration in terms of such simplified clearance requirements.

### **Simplified clearance requirements**

**522.** (1) Simplified clearance requirements that may be prescribed in terms of section **521**(1) may –

- (a) provide for the submission of simplified clearance declarations to clear goods in terms of this Part;
- (b) allow other documents to be submitted in lieu of clearance declarations to clear goods in terms of this Part, including –
  - (i) any transport documents issued in respect of the goods;
  - (ii) any supporting documents issued in respect of the goods; and
  - (iii) any other documents required to be submitted in respect of the goods to the customs authority in terms of this Act;
- (c) prescribe the minimum information such simplified clearance declarations or other documents must contain;
- (d) prescribe timeframes for the submission of such simplified clearance declarations or other documents;
- (e) prescribe the manner of submission of such simplified clearance declarations or other documents;
- (f) exempt goods that are cleared in terms of this Part from any specific provisions of this Act applicable to the clearance and release of goods; and
- (g) prescribe any other relevant matters.

(2) Different simplified clearance requirements may be prescribed in terms of subsection (1) for different categories of goods.

### **Tax payable in respect of goods cleared in terms of this Part**

**523.** (1) Any import or export tax payable on goods that are cleared in terms of this Part must be –

- (a) assessed when the simplified clearance declaration or other document that may be used as a clearance declaration in respect of those goods is accepted by the customs authority in terms of section **171**; and
- (b) paid on demand following such assessment, unless payment of the tax is deferred in terms of the applicable tax levying Act.

(2) Unless the applicable tax levying Act determines otherwise, the rate of tax applicable to the goods is the rate applicable as at the date of acceptance by the customs authority of the simplified clearance declaration or other document.

### **Application of this Part to restricted and sectorally controlled goods**

**524.** When applying this Part to –

- (a) restricted goods, section **765** must be complied with when the simplified clearance declaration or other document that may be used as a clearance declaration is submitted to the customs authority; or
- (b) sectorally controlled goods, such application does not affect compliance with section **775**.

### ***Part 4: Other matters***

#### **Rules to facilitate implementation of this Chapter**

**527.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) that exclude any category or kind of goods from the application of any Part of this Chapter –
  - (i) if the clearance and release of such goods in terms of that Part present undue risk to the payment or collection of tax; or
  - (ii) if such goods are not suitable for fast-tracked, incomplete, provisional or simplified clearance and release;
- (b) prescribing forms, processes, requirements and timeframes for the submission to the customs authority of applications in terms of this Chapter;
- (c) designating the Customs Offices to which applications in terms of this Chapter may be submitted in paper format;
- (d) prescribing the manner in which the release of goods that are cleared in terms of this Chapter must be authorised; and
- (f) ....

#### **Offences in terms of this Chapter**

**528.** (1) A person who submits –

- (a) an incomplete clearance declaration is guilty of an offence if that incomplete clearance declaration does not comply with the requirements in terms of section **510**; or
- (b) a provisional clearance declaration is guilty of an offence if that provisional clearance declaration does not comply with the requirements in terms of section **511**.

(2) A person clearing goods in terms of an incomplete clearance declaration or a provisional clearance declaration is guilty of an offence if that person contravenes or fails to comply with section **513**(1) or (2).

(3) A person who obtained release of goods in terms of section **516** is guilty of an offence if that person contravenes or fails to comply with section **517**.

(4) A person orally clearing goods in terms of section **525**(1) is guilty of an offence if that person contravenes or fails to comply with section **525**(2).

## CHAPTER 24

### DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

#### Purpose and application of this Chapter

**529.** (1) The purpose of this Chapter is to determine –

- (a) the procedures to be followed when goods not in free circulation are damaged, destroyed, lost or unaccounted for; and
- (b) the tax and other consequences when such goods are damaged, destroyed, lost or unaccounted for.

(2) This Chapter does not apply to goods that have become damaged, destroyed or lost or are unaccounted for in a state warehouse operated by the Commissioner.

#### *Part 1: Goods other than compensating products*

#### Application of this Part

**530.** (1) This Part applies to all goods not in free circulation that have become damaged, destroyed or lost or are unaccounted for, including –

- (a) imported goods to which section **104** applies that were damaged, destroyed or lost or became unaccounted for before the goods –
  - (i) are cleared as required by that section for home use or a customs procedure; or
  - (ii) were released for home use or a customs procedure;
- (b) imported goods cleared for home use or a customs procedure in terms of section **170** that were damaged, destroyed or lost or became unaccounted for before the goods were released for home use or that customs procedure; or

- (c) goods under a customs procedure that were damaged, destroyed or lost or became unaccounted for before the completion of the procedure.<sup>341</sup>

(2) This Part does not apply to –

- (a) compensating products;<sup>342</sup> or
- (b) goods that were seized or confiscated or that were abandoned to the Commissioner.<sup>343</sup>

### **Notification of goods damaged, destroyed, lost or unaccounted for**

**531.** (1) The customs authority must within a period and in a manner as may be prescribed by rule be notified if goods to which this Part applies are damaged, destroyed, lost or unaccounted for.

(2) A notification referred to in subsection (1) must be submitted by the person –

- (a) who was in physical control of the goods when the goods were damaged, destroyed or lost, in the case of damaged, destroyed or lost goods; or
- (b) who discovered that the goods are unaccounted for, in the case of goods unaccounted for.

(3) Subsection (2) does not prevent any of the following persons from submitting the notification referred to in subsection (1):

- (a) the person clearing the goods;<sup>344</sup>
- (b) the customs broker or other person who submitted the clearance declaration in respect of the goods;
- (c) the owner of the goods; or
- (d) any other person who has a material interest in the goods.

(4) A notification referred to in subsection (1) must –

- (a) identify the goods damaged, destroyed or lost or unaccounted for, in a manner and by way of documents as may be prescribed by rule;
- (b) indicate whether the goods have been cleared, and if so –
  - (i) whether for home use or a customs procedure; and

<sup>341</sup> As a customs procedure commences when goods are cleared for the procedure, this paragraph covers all goods cleared for a customs procedure, including goods in free circulation cleared under the export procedure for export. Apart from goods cleared for a customs procedure, goods that automatically come under a custom procedure are also included here, such as means of transport used in international trade and reusable transport equipment. See for instance sections **274** and **275**.

<sup>342</sup> See Part **2** of this Chapter for compensating products that become damaged, destroyed, lost or unaccounted for.

<sup>343</sup> See section **545** for seized, confiscated or abandoned goods that are damaged, destroyed or lost or unaccounted for.

<sup>344</sup> See section **166**.

- (ii) the number and date of the clearance declaration;
- (c) give a detailed account of how, when and where the goods became damaged, destroyed, lost or unaccounted for; and
- (d) contain any other particulars as may be prescribed by rule.

### **Consequences of failure to notify**

**532.** If the customs authority is not notified in accordance with section **531** of goods to which this Part applies that were damaged, destroyed, lost or unaccounted for –

- (a) any tax that was payable on the goods before they were damaged, destroyed, lost or unaccounted for remains payable as if the goods were not damaged, destroyed, lost or unaccounted for;
- (b) no tax already paid on the goods is refundable;
- (c) section **107(1)** must be applied to the goods, in the case of imported goods damaged, destroyed, lost or unaccounted for before the goods were cleared in accordance with sections **104** and **105** for home use or a customs procedure;
- (d) section **127(1)** must be applied to the goods, in the case of imported goods damaged, destroyed, lost or unaccounted for whilst under a customs procedure; and
- (e) section **128(1)** must be applied to the goods, in the case of goods damaged, destroyed, lost or unaccounted for whilst under a customs procedure if the goods were in free circulation when the goods came under that procedure.

### **Damaged goods**

**533.** (1) A notification in terms of section **531** in relation to damaged goods must be accompanied by documentary proof if the goods were damaged due to –

- (a) a natural occurrence;
- (b) an accident;
- (c) a hostile act by a third party; or
- (d) the inherent characteristics of the goods.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the goods were damaged due to a cause referred to in that subsection –

- (a) any existing clearance declaration submitted in respect of the goods must be –
  - (i) withdrawn, if all the goods covered by the declaration were damaged; or
  - (ii) amended to exclude the damaged goods, if only part of the goods covered by the declaration was damaged;
- (b) any import or export tax payable but not yet paid on the goods by virtue of that clearance falls away in respect of the damaged goods;

- (c) any import or export tax already paid on the damaged goods by virtue of that clearance may, subject to the tax levying Act regulating that tax, be refunded to the person who paid the tax;<sup>345</sup> and
- (d) the damaged goods must, in the case of imported goods, within a timeframe as may be prescribed by rule –
  - (i) be cleared for home use or a permissible customs procedure;
  - (ii) be abandoned to the Commissioner in accordance with Chapter 25; or
  - (iii) at the expense of a person referred to in section 531(2) or (3) and under customs supervision be exported from the Republic or destroyed.

(3) If damaged imported goods are cleared for home use or a permissible customs procedure in terms of subsection (2)(d)(i), any tax payable on the goods by virtue of that clearance may be set off against any tax referred to in subsection (2)(c) refunded in terms of the applicable tax levying Act.

- (4) The consequences set out in section 532 apply if –
  - (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods were damaged due to a cause referred to in that subsection; or
  - (b) no such documentary proof is submitted to the customs authority.

### **Destroyed goods**

- 534.** (1) A notification in terms of section 531 in relation to destroyed goods must be accompanied by documentary proof if the goods were destroyed due to –
- (a) a natural occurrence;
  - (b) an accident;
  - (c) a hostile act by a third party; or
  - (d) the inherent characteristics of the goods.

- (2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the goods were destroyed due to a cause referred to in that subsection –
- (a) any existing clearance declaration submitted in respect of the goods must be –
    - (i) withdrawn, if all the goods covered by the declaration were destroyed; or
    - (ii) amended to exclude the destroyed goods, if only part of the goods covered by the declaration was destroyed;
  - (b) any import or export tax payable but not yet paid on the goods by virtue of that clearance falls away in respect of the destroyed goods;

<sup>345</sup> But see section 544.

- (c) any import or export tax already paid on the destroyed goods by virtue of that clearance may, subject to the tax levying Act regulating that tax, be refunded to the person who paid the tax;<sup>346</sup> and
- (d) any parts or materials that have been salvaged from the destroyed goods or that are salvageable, must, in the case of imported goods, within a period prescribed by rule –
  - (i) be cleared for home use or a permissible customs procedure;
  - (ii) be abandoned to the Commissioner in accordance with Chapter 25; or
  - (iii) at the expense of a person referred to in section 531(2) or (3), and under customs supervision, be exported from the Republic or destroyed.

(3) If any parts or materials that have been salvaged from the destroyed goods or that are salvageable are cleared for home use or a permissible customs procedure in terms of subsection (2)(d)(i), any tax payable on the parts or materials by virtue of that clearance may be set off against any tax referred to in subsection (2)(c) which is refundable in terms of the applicable tax levying Act.

- (4) The consequences set out in section 531 apply if –
  - (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods were destroyed due to a cause referred to in that subsection; or
  - (b) no such documentary proof is submitted to the customs authority.

### **Lost goods**

**535.** (1) A notification in terms of section 531 in relation to lost goods must be accompanied by documentary proof –

- (a) if the goods were lost due to –
  - (i) a natural occurrence;
  - (ii) an accident;
  - (iii) a hostile act by a third party; or
  - (iv) the inherent characteristics of the goods; and
- (b) that the goods after having been lost due to an occurrence referred to in paragraph (a) have not gone into home use.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the goods were lost due to a cause referred to in that subsection and that the goods have not gone into home use –

<sup>346</sup> But see section 544.



- (a) any existing clearance declaration submitted in respect of the goods must be –
  - (i) withdrawn, if all the goods covered by the declaration were lost; or
  - (ii) amended to exclude the lost goods, if only part of the goods covered by the declaration was lost;
- (b) any import or export tax payable but not yet paid on the goods by virtue of that clearance falls away in respect of the lost goods; and
- (c) any import or export tax already paid on the lost goods by virtue of that clearance may, subject to the tax levying Act regulating that tax, be refunded to the person who paid the tax.<sup>347</sup>

(3) The consequences set out in section **532** apply if –

- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) –
  - (i) that the goods were lost due to a cause referred to in that subsection; or
  - (ii) that the lost goods have not gone into home use; or
- (b) no such documentary proof is submitted to the customs authority.

#### **Goods unaccounted for**

**536.** (1) A notification in terms of section **531** in relation to goods that are unaccounted for must be accompanied by documentary proof if the shortfall in the goods is due to –

- (a) a short shipment of the goods;
- (b) an administrative error in any documents or records relating to the goods; or
- (c) another justifiable cause as may be recognised by rule.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the goods are unaccounted for due to a cause referred to in that subsection –

- (a) any existing clearance declaration submitted in respect of the goods must be –
  - (i) withdrawn, if all the goods covered by the declaration are unaccounted for; or
  - (ii) amended to exclude the goods unaccounted for, if only part of the goods covered by the declaration is unaccounted for;
- (b) any import or export tax payable but not yet paid on the goods by virtue of that clearance falls away in respect of the goods unaccounted for; and
- (c) any import or export tax already paid on the goods unaccounted for by virtue of that clearance may, subject to the tax levying Act regulating that tax, be refunded to the person who paid the tax.<sup>348</sup>

<sup>347</sup> But see section **544**.

<sup>348</sup> But see section **544**.

- (3) The consequences set out in section **532** apply if –
- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods are unaccounted for due to a cause referred to in that subsection; or
  - (b) no such documentary proof is submitted to the customs authority.

### ***Part 2: Compensating products***<sup>349</sup>

#### **Application of this Part**

**537.** (1) This Part applies to –

- (a) compensating products obtained from the processing of goods under the inward processing procedure<sup>350</sup> that were damaged, destroyed or lost or became unaccounted for before being exported from the Republic as inward processed compensating products; and
- (b) compensating products imported into the Republic under the outward processing procedure<sup>351</sup> that were damaged, destroyed or lost or became unaccounted for before being released for home use as outward processed compensating products.

(2) This Part does not apply to compensating products referred to in subsection (1) that were seized or confiscated or were abandoned to the Commissioner.<sup>352</sup>

#### **Notification of compensating products damaged, destroyed, lost or unaccounted for**

**538.** (1) The customs authority must within a period and in a manner as may be prescribed by rule be notified if compensating products to which this Part applies are damaged, destroyed, lost or unaccounted for.

- (2) A notification referred to in subsection (1) must be submitted –
- (a) in the case of damaged, destroyed or lost compensating products, by the person who was in physical control of the compensating products when they were damaged, destroyed or lost; or
  - (b) in the case of compensating products unaccounted for, by –
    - (i) the licensee of the premises where the goods from which the compensating products are obtained were processed; or

<sup>349</sup> Home use compensating products are excluded from this Part as such products once manufactured are allowed into free circulation without formalities. Accordingly, damage to, destruction or loss of such compensating products as goods in free circulation has no tax implications.

<sup>350</sup> See Chapter 17.

<sup>351</sup> See Chapter 19.

<sup>352</sup> See section 545 for seized, confiscated or abandoned goods that are damaged, destroyed or lost or unaccounted for.

- (ii) the person who discovered that the compensating products are unaccounted for.

(3) Subsection (2) does not prevent any of the following persons to submit the notification referred to in subsection (1):

- (a) the person who initially cleared the goods from which the compensating products were obtained for inward or outward processing;
- (b) the customs broker who submitted the clearance declaration in respect of those goods;
- (c) the owner of the compensating products; or
- (d) any other person who has a material interest in the compensating products.

(4) A notification referred to in subsection (1) must –

- (a) identify the compensating products damaged, destroyed or lost or unaccounted for, in a manner and by way of documents as may be prescribed by rule;
- (b) indicate whether the compensating products were under the inward or outward processing procedure;
- (c) state the number and date of the clearance declaration of the goods from which the compensating products were obtained;
- (d) give a detailed account of how, when and where the compensating products became damaged, destroyed, lost or unaccounted for; and
- (e) contain any other particulars as may be prescribed by rule.

### **Consequences of failure to notify**

**539.** If the customs authority is not notified in accordance with section **538** of compensating products to which this Part applies that were damaged, destroyed or lost or became unaccounted for –

- (a) section **417(1)**<sup>353</sup> or **459(1)**,<sup>354</sup> as may be appropriate, must be applied to the goods from which the compensating products were obtained; and
- (b) the compensating products must, in the case of compensating products under the outward processing procedure, for tax purposes be regarded to be cleared for home use under Chapter **8**.<sup>355</sup>

### **Damaged compensating products**

<sup>353</sup> For compensating products under the inward processing procedure.

<sup>354</sup> For compensating products under the outward processing procedure.

<sup>355</sup> Section **153** applies if goods are regarded to be cleared for home use.

**540.** (1) A notification in terms of section **538** in relation to damaged compensating products must be accompanied by documentary proof if the compensating products were damaged due to –

- (a) a natural occurrence;
- (b) an accident;
- (c) a hostile act by a third party; or
- (d) the inherent characteristics of the compensating products.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the compensating products were damaged due to a cause referred to in that subsection, the damaged compensating products –

- (a) in the case of compensating products under the inward processing procedure, must –
  - (i) continue to be dealt with as inward processed compensating products in accordance with the inward processing procedure or be dealt with in terms of section **411** as by-products or commercially valuable waste obtained from the processing of goods under that procedure;
  - (ii) be abandoned to the Commissioner in accordance with Chapter **25**; or
  - (iii) at the expense of a person referred to in section **538**(2) or (3) be destroyed under customs supervision; or
- (b) in the case of compensating products under the outward processing procedure, must –
  - (i) continue to be dealt with as outward processed compensating products obtained from the processing of goods under the outward processing procedure;
  - (ii) be abandoned to the Commissioner in accordance with Chapter **25**; or
  - (iii) at the expense of a person referred to in section **525**(2) or (3) be destroyed under customs supervision.

(3) The consequences set out in section **539** apply if –

- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the compensating products were damaged due to a cause referred to in that subsection; or
- (b) no such documentary proof is submitted to the customs authority.

### **Destroyed compensating products**

**541.** (1) A notification in terms of section **538** in relation to destroyed compensating products must be accompanied by documentary proof if the compensating products were destroyed due to –

- (a) a natural occurrence;
- (b) an accident;
- (c) a hostile act by a third party; or
- (d) the inherent characteristics of the compensating products.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the compensating products were destroyed due to a cause referred to in that subsection whilst under –

- (a) the inward processing procedure, any parts or materials that may have been salvaged or are salvageable from the destroyed compensating products must –
  - (i) be dealt with in terms of section **411** as by-products or commercially valuable waste obtained from the processing of goods under the inward processing procedure;<sup>356</sup>
  - (ii) be abandoned to the Commissioner in accordance with Chapter **25**; or
  - (iii) at the expense of a person referred to in section **538**(2) or (3) be destroyed under customs supervision; or
- (c) the outward processing procedure, any parts or materials that may have been salvaged or are salvageable from the destroyed compensating products, may –
  - (i) be cleared under the outward processing procedure for home use as outward processed compensating products;
  - (ii) be abandoned to the Commissioner in accordance with Chapter **25**; or
  - (iii) at the expense of a person referred to in section **538**(2) or (3) be destroyed under customs supervision.

(3) The consequences set out in section **539** apply if –

- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the compensating products were destroyed due to a cause referred to in that subsection; or
- (b) no such documentary proof is submitted to the customs authority.

### **Lost compensating products**

**542.** (1) A notification in terms of section **538** in relation to lost compensating products must be accompanied by documentary proof –

- (a) if the compensating products were lost due to –
  - (i) a natural occurrence;

<sup>356</sup> Section **411**(1) provides for by-products or commercially valuable waste to be cleared and released for export under the inward processing procedure as if the by-products or waste were inward processed compensating products. Alternatively it could be allowed into free circulation in accordance with section **411**(2).

- (ii) an accident;
  - (iii) a hostile act by a third party; or
  - (iv) the inherent characteristics of the compensating products; and
- (b) that the compensating products after having been lost due to an occurrence referred to in paragraph (a) have not gone into home use.

- (2) The consequences set out in section **539** apply if –
- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) –
- (i) that the compensating products were lost due to a cause referred to in that subsection; or
  - (ii) that the lost compensating products were not diverted for home use or have not gone into home use in any other way; or
- (b) no such documentary proof is submitted to the customs authority.

### **Compensating products unaccounted for**

**543.** (1) A notification in terms of section **538** in relation to compensating products that are unaccounted for must be accompanied by documentary proof if the shortfall in the compensating products was due to –

- (a) a short shipment of the compensating products;
- (b) an administrative error in any documents or records relating to the compensating products;
- (c) an erroneous calculation in the conversion of goods to compensating products; or
- (d) another justifiable cause as may be recognised by rule.

- (2) The consequences set out in section **539** apply if –
- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods are unaccounted for due to a cause referred to in that subsection; or
- (b) no such documentary proof is submitted to the customs authority.

### ***Part 3: Other matters***

#### **Tax waivers and refunds for goods damaged, destroyed, lost or unaccounted for not applicable in certain circumstances**

**544.** A provision of this Chapter which provides for tax on goods to fall away or to be refunded when goods are damaged, destroyed, lost or unaccounted for does not apply if in any specific case the beneficiary of such tax waiver or refund has received or is entitled to receive insurance or other compensation in respect of such tax that has become payable to

the beneficiary as a result of the fact that the goods were damaged, destroyed, lost or unaccounted for.

**Seized, confiscated and abandoned goods damaged, destroyed, lost or unaccounted for**

**545.** (1) The customs authority must within a period and in a manner as may be prescribed by rule be notified if goods that were seized or confiscated or goods that were abandoned to the Commissioner are damaged, destroyed, lost or unaccounted for.

(2) A notification referred to in subsection (1) must be submitted –

- (a) in the case of damaged, destroyed or lost goods, by the licensee who was in physical control of the goods when the goods were damaged, destroyed or lost; or
- (b) in the case of goods unaccounted for, by the licensee responsible for the goods.

(3) If goods that were seized, confiscated or abandoned are damaged, destroyed, lost or unaccounted for –

- (a) any tax that was outstanding on the goods before they were damaged, destroyed, lost or unaccounted for remains payable as if the goods were not damaged, destroyed, lost or unaccounted for; and
- (b) no tax already paid on the goods is refundable.

(4) The licensee referred to in subsection (2) is liable for the payment of any outstanding import or export tax payable on seized, confiscated or abandoned goods –

- (a) damaged, destroyed or lost whilst under that person's physical control, unless it is proved that the goods were damaged, destroyed or lost due to –
  - (i) a natural occurrence;
  - (ii) an accident;
  - (iii) a hostile act by a third party; or
  - (iv) the inherent characteristics of the goods; or
- (b) unaccounted for, unless it is proved that the goods are unaccounted for due to –
  - (i) a short shipment of the goods;
  - (ii) an administrative error in any documents or records relating to the goods; or
  - (iii) another justifiable cause as may be recognised by rule.

(5) Subsection (4) does not affect the Commissioner's right to recover any import or export tax payable on seized, confiscated or abandoned goods that were damaged or destroyed, from the proceeds of the sale of the damaged goods or any parts or materials that may have been salvaged from the destroyed goods.

## **Wreck**

**546.** (1) No person may without the permission of the customs authority remove any wreck from where it is found or alter in quantity or quality such wreck unless necessary for its preservation or safe-keeping.

(2) Any person in possession of any wreck must without delay –

- (a) give notice thereof to the nearest Customs Office; and
- (b) if required to do so, deliver the wreck to the Commissioner.

(3) Subsection (2)(b) does not apply to the owner of the wreck or the duly authorised agent of the owner.

(4) Wreck consisting of goods that are not in free circulation must be dealt with in accordance with this Chapter to the extent as may be prescribed by rule. Wreck consisting of salvageable damaged or undamaged goods not in free circulation must be dealt with in accordance with the provisions of this Act applicable to such goods.

## **Rules to facilitate implementation of this Chapter**

**547.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) prescribing documents that may be submitted to the customs authority to prove the cause why goods were damaged, destroyed, lost or unaccounted for;
- (b) prescribing any additional particulars a notification referred to in section **531** or **538** must contain;
- (c) prescribing procedures how wreck must be dealt with for purposes of this Act and a tax levying Act, whether the wreck consists of goods that are in free circulation or not;
- (d) regulating the application of this Chapter to wreck consisting of goods that are not in free circulation;

## **Offences in terms of this Chapter**

**548.** A person referred to in –

- (a) section **531**(2) is guilty of an offence if that person contravenes or fails to comply with section **531**(1) or (4), **533**(1), **534**(1), **535**(1) or **536**(1); or
- (b) section **539**(2) is guilty of an offence if that person contravenes or fails to comply with section **539**(1) or (4), **540**(1), **541**(1), **542**(1), **543**(1) or **546**(1) or (2).



## CHAPTER 25

### ABANDONMENT OF GOODS TO COMMISSIONER

#### Purpose and application of this Chapter

**549.** (1) The purpose of this Chapter is to provide for –

- (a) goods that are not in free circulation to be voluntarily abandoned to the Commissioner; and
- (b) the disposal of such goods.

(2) This Chapter does not apply to prohibited, restricted, sectorally controlled and counterfeit goods, and such goods must be dealt with in accordance with Chapters **34** and **35**, as may be appropriate.

#### Goods that may be abandoned to Commissioner

**550.** The owner of goods that are not in free circulation, or another person authorised to act on behalf of the owner, may by agreement with the Commissioner abandon the goods to the Commissioner –

- (a) if the goods were damaged and the owner elects not to obtain release of the damaged goods for home use or a customs procedure;
- (b) if the goods consist of parts or materials salvaged from goods that were destroyed and the owner elects not to obtain release of the parts or materials for home use or a customs procedure;
- (c) if the value of the goods to the owner does not justify the cost of obtaining release of the goods for home use or a customs procedure; or
- (d) where a provision of this Act or a tax levying Act provides for the abandonment of the goods to the Commissioner.

#### Application to abandon goods to Commissioner

**551.** (1) The owner of goods that are not in free circulation or another person authorised to act on behalf of the owner may apply in writing to the customs authority to abandon the goods to the Commissioner.

(2) An application to abandon goods to the Commissioner must –

- (a) identify the goods in sufficient detail;
- (b) state the reason for the abandonment;
- (c) indemnify the Commissioner against any claim in respect of the abandoned goods by another person;
- (d) contain an undertaking to pay any cost relating to –
  - (i) the removal of the goods to a state warehouse or other place of security; and

- (ii) the storage of the goods; and
- (e) reflect any other information as may be prescribed by rule.

(3) Application in terms of this section may be made, as may be appropriate, at any time before the goods are –

- (a) released for home use;
- (b) processed; or
- (c) exported from the Republic.

### **Consideration of applications**

**552.** The customs authority must consider an application to abandon goods to the Commissioner, and may –

- (a) approve the application if abandonment is in the best interest of the state; or
- (b) refuse the application.

### **Abandonment notices**

**553.** (1) If an application to abandon goods to the Commissioner is approved, the customs authority must issue a notice of abandonment to –

- (a) the person who lodged the application; and
- (b) the person who is in physical control of the goods.

(2) A notice of abandonment must –

- (a) identify the abandoned goods in sufficient detail;
- (b) state the date on which the goods are abandoned to the Commissioner; and
- (c) contain any other particulars as may be prescribed by rule.

### **Consequences of abandonment**

**554.** Upon issuing a notice of abandonment referred to in section **553** –

- (a) any clearance declaration submitted in respect of the goods must be –
  - (i) withdrawn, if all the goods covered by the declaration are abandoned; or
  - (ii) amended to exclude the abandoned goods, if only part of the goods covered by the declaration is abandoned;
- (b) ownership in the goods becomes vested in the Commissioner for credit of the National Revenue Fund;
- (c) any import or export tax payable but not yet paid on the goods by virtue of that clearance falls away; and

- (d) any import or export tax already paid on the goods by virtue of that clearance may, subject to the tax levying Act regulating that tax, be refunded to the person who paid the tax;
- (e) the goods must –
  - (i) be removed to a state warehouse or other place of security determined by the customs authority; and
  - (ii) be dealt with in terms of Chapter 26.

### **Consequences of refusal for goods to be abandoned**

**555.** If an application to abandon goods to the Commissioner is refused, and the goods are not cleared and released for home use or a customs procedure in accordance with the requirements regulating the clearance and release of goods for home use or a customs procedure, the goods must at the cost of the owner or importer of the goods and under supervision of the customs authority be destroyed or exported from the Republic.

### **Application to destroy goods**

**556.** (1) The owner of goods that are not in free circulation or another person authorised to act on behalf of the owner may, instead of abandoning the goods to the Commissioner, apply in writing to the customs authority to destroy the goods under customs supervision.

(2) Section 551(2) and 552 apply with any necessary changes as the context may require in respect of an application referred to in subsection (1).

(3) If an application referred to in subsection (1) is granted, the goods must be destroyed under customs supervision in accordance with requirements as may be prescribed by rule or as the customs authority may determine in any specific case.

(4) If the owner of goods destroyed in terms of this section intends to utilise any waste or scrap remaining after the destruction of the goods, such waste or scrap must be cleared for home use in terms of Chapter 8 or a permissible customs procedure within a timeframe as may be prescribed by rule.

## **CHAPTER 26**

### **STATE WAREHOUSES**

#### ***Part 1: Introductory provisions***

#### **Purpose and application of this Chapter**

**557.** (1) The purpose of this Chapter is to provide for –

- (a) goods to be secured in state warehouses or other places –
    - (i) if those goods are dealt with in breach of this Act, a tax levying Act or any other applicable legislation; or
    - (ii) if this is necessary for the enforcement of this Act, a tax levying Act or any other applicable legislation; and
  - (b) the handling, storage and disposal of goods so secured.
- (2) This Chapter may be applied to any goods that are subject to customs control.

### **Designation and licensing of premises as state warehouses**

**558.** The Commissioner may –

- (a) designate a facility as a state warehouse to be operated by the Commissioner in accordance with this Act; or
- (b) licence any premises in terms of Chapter **28** as a state warehouse to be operated by the licensee in accordance with this Act and any conditions subject to which the premises were licensed.

### ***Part 2: Removal of goods to and securing goods in state warehouses***

#### **Removal of goods to state warehouses**

**559.** (1) A licensee who is in physical control of goods –

- (a) imported into the Republic must remove the goods to a state warehouse determined in terms of subsection (3) –
  - (i) if section **104** applies to those goods and section **105** has not been complied with in respect of those goods; or
  - (ii) if those goods fall within a category of goods referred to in section **106(1)(e)**, (g) or (h) and the goods are not claimed within a timeframe as may be prescribed by rule after the goods have been off loaded; or
- (b) to be exported from the Republic must remove those goods to a state warehouse determined in terms of subsection (3) –
  - (i) if section **109(1)(a)**, (b) or (c) applies to those goods and the goods are delivered to a cargo terminal without any clearance declaration having been submitted to clear the goods for export;<sup>357</sup> or
  - (ii) if those goods have been cleared and released for export and section **356** has not been complied with in respect of those goods.

<sup>357</sup> Other goods to which section **108** applies and which were not cleared in accordance with section **109** may be removed to a state warehouse if customs so direct in terms of section **559(2)**.

(2) The customs authority may at any time direct a licensee or any other person in physical control of goods to remove those goods to a state warehouse determined in terms of subsection (3) if those goods –

- (a) were dealt with in breach of this Act;
- (b) are subject to a lien in terms of section **689** of this Act or a tax levying Act;<sup>358</sup>
- (c) are detained, seized or confiscated in terms of Chapter **33** or **34**;<sup>359</sup>
- (d) abandoned to the Commissioner; or
- (e) for any other reason required to be secured to ensure compliance with this Act or a tax levying Act or any other legislation applicable to the goods.

(3) The customs authority may for the purpose of subsection (1) or (2) determine the state warehouse to which goods must be removed in terms of that subsection.

(4) The customs authority must submit a copy of any direction issued in terms of subsection (2) to the customs officer or licensee in charge of the state warehouse to which the goods are to be removed.

(5) This section must be read subject to section **569**.

#### **Submission of removal notices**

**560.** (1) Before removing goods to a state warehouse in compliance with section **559**(1) or in compliance with a direction issued in terms of section **559**(2), the person who must remove the goods must submit a notice of removal of the goods containing such information as may be prescribed by rule, to –

- (a) the customs officer in charge of the state warehouse, if that warehouse is operated by the Commissioner; or
- (b) the licensee of the state warehouse, if that warehouse is a licensed state warehouse.

(2) A notice referred to in subsection (1) must be accompanied by all supporting documents concerning those goods which are in the possession of the person who must remove the goods.

#### **Failure to remove goods to state warehouses**

<sup>358</sup> See Part 4 of Chapter 3 of the Customs Duty Act.

<sup>359</sup> Counterfeit goods detained in terms of Chapter **35** must in terms of section **795**(3)(a) be removed to a counterfeit depot in terms of the Counterfeit Goods Act. However, section **559**(2)(c) above will apply if the counterfeit goods were detained in terms of section **737**.

**561.** If a person fails to comply with section **559(1)** or a direction issued in terms of section **556(2)** to remove goods to a state warehouse, the customs authority may remove the goods at the risk and expense of that person to a state warehouse.

#### **Recovery of expenses for removal of goods to state warehouses**

**562.** A person referred to in section **559(1)** or (2) may recover any expenses incurred in removing goods to a state warehouse in terms of that section or to compensate the Commissioner in terms of section **561**, from –

- (a) the importer or exporter, or the owner, of the goods;
- (b) the agent in the Republic of the importer, exporter or owner, if the importer, exporter or owner is not located in the Republic; or
- (c) the proceeds of the sale of the goods in accordance with section **584**.

#### **Redirection of goods**

**563.** No person may, without the permission of the customs authority, redirect goods to which section **559(1)** or a direction issued in terms of section **559(2)** applies to a place other than a state warehouse determined in terms of section **559(3)**.

#### **Charges for goods in state warehouses**

**564.** (1) The Commissioner may by rule determine for goods stored in a state warehouse –

- (a) state warehouse rent at a rate fixed by the Commissioner; and
- (b) additional charges for goods which require special care or treatment.

(2) State warehouse rent and additional charges determined in terms of subsection (1) are –

- (a) payable by persons prescribed by rule; and
- (b) payable to –
  - (i) the Commissioner, in the case of a state warehouse operated by the Commissioner; or
  - (ii) the licensee of the state warehouse, in the case of a licensed state warehouse.

(3) If the goods are sold in terms of section **581** or **582** any amount outstanding at the date of sale may be recovered from the proceeds of the sale in accordance with section **584**.

(4) The Commissioner may when justified by special circumstances exclude any specific goods or category of goods from state warehouse rent or additional charges.

### **Accounting**

- 565.** (1) The customs officer or licensee in charge of a state warehouse must –
- (a) keep record of –
    - (i) all goods received in and removed from the state warehouse; and
    - (ii) all goods that are in terms of section **569(4)** required to be recorded in the accounting records of that state warehouse;
  - (b) perform monthly stock checks; and
  - (c) perform such other accounting tasks as may be prescribed by rule or stipulated in the licensee's licence agreement.

(2) A record in terms of subsection (1)(a) must be kept in such a manner and format and must contain such information as may be prescribe by rule.<sup>360</sup>

### **Reporting by licensees of state warehouses**

**566.** (1) The licensee of a state warehouse must, subject to section **875**, within three working days after the end of each month submit to the customs authority a report for that month in connection with all goods in that warehouse.

(2) A report in terms of subsection (1) must contain such information as may be prescribed by rule, including information concerning –

- (a) all goods received in the state warehouse during the reporting period;
- (b) all goods removed from the state warehouse during the reporting period;
- (c) any goods damaged, destroyed or lost during the reporting period;
- (d) any goods unaccounted for as at the end of the reporting period; and
- (e) any surplus goods as at the end of the reporting period.

### **Responsibilities of licensees of licensed state warehouses**

**567.** The licensee of a licensed state warehouse to which goods were removed in terms of section **559(1)** or (2) must take all reasonable steps to safeguard the goods in the warehouse against damage, destruction or loss.

### **Risks in connection with goods removed to or stored in state warehouses**

**568.** The importer or exporter, or the owner, of goods removed to or kept in a state warehouse, or, if the importer, exporter or owner is not located in the Republic, the agent in

<sup>360</sup> Own computerised system for record keeping purposes is permissible in terms of section **884**.

the Republic of that importer, exporter or owner, carries the risk for any damage to or destruction or loss of –

- (a) those goods that may –
  - (i) occur whilst those goods are removed to, within or from the warehouse, or stored in the warehouse; or
  - (ii) be caused by the handling or opening of any package or container in which those goods are contained, or the inspection of the contents, by a customs officer at the warehouse; or
- (b) any other property that may be caused by –
  - (i) the removal of those goods to, within or from the warehouse, or the storage of those goods in the warehouse; or
  - (ii) the handling or opening of any package or container in which those goods are contained, or the inspection of the contents, by a customs officer at the warehouse.

***Part 3: Retention of goods at or removal of goods to licensed premises other than state warehouses***

**Directions or authorisations for goods to be retained at or removed to licensed premises other than state warehouses**

**569.** (1) If a condition for the removal of goods to a state warehouse in terms of section **559**(1) or (2) exists, the customs authority may direct or authorise the licensee or other person in physical control of those goods, in stead of removing the goods to a state warehouse in terms of that section –

- (a) to retain the goods for a specific period on the premises where they are currently located, provided those premises are licensed premises; or
- (b) to remove the goods to any licensed premises determined by the customs authority.

(2) Except where clearly inappropriate, the provisions of this Act relating to state warehouses apply to any licensed premises where goods are retained or to which goods are removed in terms of subsection (1) as if those premises were a licensed state warehouse.

(3) Goods retained at or removed to any licensed premises in terms of subsection (1) must for accounting purposes be recorded in the accounting records of a state warehouse operated by the Commissioner, as may be determined by the customs authority.

(4) The customs authority must give notice to the licensee of the licensed premises where the goods are retained or to which the goods were removed that –



- (a) subsection (2) applies to those premises for as long as the goods remain on those premises;
- (b) the goods must be kept secured on those premises as if the goods were in a state warehouse; and
- (c) the goods must for accounting purposes be recorded in the accounting records of a state warehouse specified in the notice.

(5) A copy of the notice referred to in subsection (4) must be submitted to the customs officer in charge of the state warehouse determined in terms of subsection (3).

#### **Submission of removal notices**

**570.** Before removing goods in terms of a direction or authorisation issued in terms of section **569(1)(b)** to any licensed premises specified in the direction or authorisation, the person who must remove the goods must submit –

- (a) a notice of removal of the goods containing such information as may be prescribed by rule, to the licensee of the premises to which those goods are to be removed; and
- (b) a copy of that notice together with all supporting documents concerning those goods which are in the possession of that person to the state warehouse determined in terms of section **569(3)**.

#### **Failure to remove goods**

**571.** If a person to whom a direction or authorisation has in terms of section **569(1)(b)** been issued fails to give effect to the direction or authorisation to remove the goods to the licensed premises specified in the direction or authorisation, the customs authority may remove those goods at the risk and expense of that person to those premises.

#### **Recovery of expenses for removal of goods**

**572.** A person to whom a direction or authorisation has in terms of section **569(1)(b)** been issued may recover any expenses incurred in removing the goods to the licensed premises specified in the direction or authorisation or to compensate the Commissioner in terms of section **571**, from –

- (a) the importer or exporter, or the owner, of the goods;
- (b) the agent in the Republic of the importer, exporter or owner, if the importer, exporter or owner is not located in the Republic; or
- (c) the proceeds of the sale of goods in accordance with section **584**.

#### **Redirection of goods**

**573.** No person may, without the permission of the customs authority –

- (a) redirect goods to which a direction or authorisation issued in terms of section **569(1)(b)** applies, to a place other than the licensed premises specified in the direction or authorisation; or
- (b) remove goods from the premises where goods are retained or to which they were removed in terms of section **569(1)(a)** or (b).

#### **Charges for goods stored at premises specified in direction or authorisation**

**574.** (1) The Commissioner may by rule regulate storage fees for goods stored at licensed premises where the goods are retained or to which the goods were removed in terms of this Part.

(2) Storage fees determined in terms of subsection (1) are –

- (a) payable by persons prescribed by rule; and
- (b) payable to the licensee of the premises where the goods are retained or to which the goods were removed.

(3) If the goods are sold in terms of section **581** or **582** any amount outstanding at the date of sale may be recovered by the person referred to in subsection (2)(b) from the proceeds of the sale in accordance with section **584**.

(4) The Commissioner may when justified by special circumstances exclude any specific goods or category of goods from storage fees.

#### **Responsibilities of licensees of premises where goods are kept**

**575.** The licensee of premises where goods are retained or to which goods were removed in terms of a direction or authorisation issued in terms of section **569(1)**, must take all reasonable steps to safeguard the goods against damage, destruction or loss.

#### **Risks in connection with goods**

**576.** The importer or exporter, or the owner of goods retained at, removed to or kept on licensed premises in terms of a direction or authorisation issued in terms of section **569(1)**, or, if the importer, exporter or owner is not located in the Republic, the agent in the Republic of that importer, exporter or owner, carries the risk for any damage to or destruction or loss of –

- (a) those goods that may –
  - (i) occur whilst those goods are removed to, within or from those premises, or stored on those premises; or

- (ii) be caused by the handling or opening of any package or container in which those goods are contained, or the inspection of the contents, by a customs officer at those premises; or
- (b) any other property that may be caused by –
  - (i) the removal of those goods to, within or from those premises, or the storage of those goods on those premises; or
  - (ii) the handling or opening of any package or container in which those goods are contained, or the inspection of the contents, by a customs officer at those premises.

#### ***Part 4: Disposal of goods in or accounted for in state warehouses***

##### **Application of this Part**

**577.** This Part applies to all goods in a state warehouse or accounted for in a state warehouse in terms of section **569(3)**, excluding –

- (a) prohibited goods to be disposed of in terms of section **762** or **763**;
- (b) restricted goods to be disposed of in terms of section **771** or **772**;
- (c) sectorally controlled goods to be disposed of in terms of section **780**; and
- (d) goods subject a lien in terms of section **689** of this Act or a tax levying Act.<sup>361</sup>

##### **Publication of lists of goods to which this Part applies**

**578.** (1) The customs authority must –

- (a) compile a list as at a date determined by it of all goods to which this Part applies –
  - (i) in each state warehouse; or
  - (ii) accounted for in each state warehouse in terms of section **569(3)**; and
- (b) publish the list, in such a manner as may be determined by it.

(2) A list referred to in subsection (1) must contain in respect of each lot –

- (a) a description of the goods;
- (b) the quantity;
- (c) any marks and identification numbers on the goods;
- (d) the name of the carrier who transported the goods;
- (e) the transport document number of the goods;
- (f) the date of importation or intended exportation of the goods;
- (g) the name of the customs broker or other person who submitted a clearance declaration in respect of the goods, if any;

<sup>361</sup> See for instance Part 4 of Chapter 3 of the Customs Duty Act.

- (h) the name of the state warehouse where the goods are kept, or in the case of goods retained at or removed to other premises in terms of section **569(1)**, the physical address of those premises; and
- (i) any other information as may be determined by the customs authority.

(3) The publication of a list in terms of subsection (1)(b) serves as public notification that the goods on the list –

- (a) may be sold in terms of section **581**, if the goods are not reclaimed in terms of section **579** within the period referred to in that section;
- (b) may be sold or may already have been sold in terms of section **582**, if that section applies to the goods; or
- (c) may otherwise be disposed of or may already have been disposed of in terms of section **585**, if that section applies to the goods.

### **Reclaiming of goods in or accounted for in state warehouses**

**579.** (1) A person entitled to goods in or accounted for in a state warehouse may, within a timeframe as may be prescribed by rule from the date of publication of the list reflecting those goods, reclaim those goods –

- (a) in the case of imported goods that have not been cleared for home use or a customs procedure, by submitting a clearance declaration to clear the goods for home use or a permissible customs procedure;
- (b) in the case of imported goods under a customs procedure, by –
  - (i) amending in accordance with section **174** the clearance declaration submitted in respect of the goods, to any extent necessary to secure release of the goods for that customs procedure;
  - (ii) replacing in accordance with section **112** any clearance declaration submitted in respect of the goods with a new clearance declaration to clear the goods for another customs procedure or for home use, as may be permissible in the circumstances; or
  - (iii) complying with any other requirement of this Act or a tax levying Act necessary to obtain possession of the goods;
- (c) in the case of goods that were in free circulation destined for export but that have not been cleared for export, by submitting a clearance declaration to clear the goods for export;
- (d) in the case of goods cleared for export that were in free circulation before cleared for export, by –

- (i) amending in accordance with section **174** the clearance declaration submitted in respect of the goods, to any extent necessary to secure release of the goods for export;
  - (ii) withdrawing the clearance declaration for export; or
  - (iii) complying with any other requirement of this Act or a tax levying Act necessary to obtain possession of the goods; or
- (e) in the case of goods of a category not referred to in paragraph (a), (b), (c) or (d), by complying with any requirements as may be prescribed by rule for that category of goods.

(2) Subsection (1) does not apply in respect of goods that –

- (a) are or have been dealt with in terms of section **582**;
- (b) have been abandoned to the Commissioner;
- (c) have been seized or confiscated; or
- (d) that are to be destroyed.

### **Removal of reclaimed goods**

**580.** (1) If the customs authority releases goods reclaimed in terms of section **579(1)** for home use or a customs procedure or otherwise approves the reclaim, the goods must be removed from the state warehouse or other premises where the goods are kept within a timeframe as may be prescribed by rule from the date of release or approval.

(2) No goods may be removed in terms of subsection (1) unless all claims referred to in section **584(1)(a)** to (g) as may be applicable to the goods have been paid.

### **Sale of goods**

**581.** (1) The customs authority may sell goods reflected in a list published in terms of section **578(1)(b)** –

- (a) if the goods were not reclaimed in terms of section **579(1)** within the period applicable to the goods;
- (b) if the goods were reclaimed but release of the goods for home use or the required customs procedure was refused<sup>362</sup> or the reclaim was otherwise not approved;
- (c) if section **580** applies to the goods and the goods are not removed from the state warehouse or premises where the goods are kept within the period applicable to the goods; or
- (d) if the goods are confiscated or abandoned goods.

<sup>362</sup> See sections **114** and **115** and other provisions regulating the release of goods.

(2) Imported goods sold in terms of this section are excluded from section **104** and those goods may be allowed into free circulation without clearance for home use, subject section **588**.

(3) Subsection (1) does not –

- (a) prevent goods from being dealt with in accordance with section **582**; or
- (b) apply to goods of a kind referred to in section **585(2)(b)** or (c).

### **Urgent sales**

**582.** (1) The customs authority may sell immediately goods that are not of a kind referred to in section **585(2)(b)** or (c) –

- (a) if those goods are of a perishable or dangerous nature; or
- (b) if a delay in the sale of the goods would result in diminishing proceeds that would not be sufficient to cover claims referred to in section **584(1)(a)** to (g), as may be applicable to the goods.

(2) Imported goods sold in terms of this section are excluded from section **104** and those goods may be allowed into free circulation without clearance for home use, subject section **588**.

### **Manner of sale**

**583.** (1) Goods may be sold in terms of section **581** or **582** in any manner determined by the Commissioner, which may include a sale –

- (a) by public auction;
- (b) by public or closed tender; or
- (c) out of hand, when appropriate.

(2) Dutiable imported goods confiscated in terms of section **747** may be sold in terms of subsection (1) only above a price set by the Commissioner at a level that would not undermine the local production of goods of the relevant kind.

### **Application of proceeds of sales**

**584.** (1) The proceeds of the sale of goods in terms of section **581** or **582** must be applied to pay the following claims in the order of preference as indicated below:

- (a) any import or export tax, interest or administrative penalty payable on the goods in terms of this Act or a tax levying Act;

- (b) any expenses incurred by the Commissioner in connection with the goods and any charges due in terms of section **564(1)** to the Commissioner in connection with the goods;
- (c) any charges due in terms of –
  - (i) section **564(2)** to the licensee of a licensed state warehouse in connection with the goods, if the goods were kept in a licensed state warehouse; or
  - (ii) section **574** to the licensee of premises where the goods were kept, if the goods were retained at or removed to such premises in terms of section **569(1)**;
- (d) any charges due to a seaport, airport or railway authority in connection with the goods;
- (e) any charges due in connection with the goods to a carrier or licensee of a customs controlled area;
- (f) any expenses due to a person in terms of section **562** or **572**; and
- (g) any freight and salvage as provided for in section 16 of the Wreck and Salvage Act, 1996 (Act No. 94 of 1996).

(2) Any surplus remaining after all claims in terms of subsection (1) have been met, must on written application by the owner of the goods be paid to the owner, provided that –

- (a) the application is supported by proof of ownership of the goods; and
- (b) is received by the Commissioner within three years of the date of sale of the goods.

(3) Subsection (2) does not apply to confiscated or abandoned goods, and any surplus remaining after all claims in terms of subsection (1) have been met accrues to the National Revenue Fund.

### **Disposal of goods otherwise than by sales**

**585.** (1) The Commissioner is not bound to sell goods referred to in section **581** or **582** and may, subject to subsection (3), instead of selling the goods dispose of the goods in any appropriate manner, including by –

- (a) donating the goods for welfare purposes;
- (b) appropriating the goods to an organ of state, including SARS, for use by that organ of state;
- (c) making the goods available as humanitarian aid to communities in the Republic or to another country; or
- (d) destroying the goods.

(2) Subsection (1) must be applied, as may be appropriate in the circumstances, to –

- (a) unsold goods if efforts to sell the goods have been fruitless;
- (b) goods that cannot economically be sold having regard to the nature or condition of the goods; or
- (c) goods that pose a risk to public safety, health or morals.

(3) Dutiable imported goods confiscated in terms of section **747** may be disposed of in terms of subsection (1) only in a way that would not undermine the local production of goods of that kind.

(4) Goods disposed of in terms of subsection (1) may be removed from the state warehouse or premises where the goods are kept as the customs authority may direct.

(5) Disposal of goods in terms of subsection (1) does not affect the liability of a person responsible in terms of this Act or a tax levying Act for paying any tax, expenses or charges in respect of the goods.

(6) Imported goods disposed of in terms of this section are excluded from section **104** and those goods may be allowed into free circulation without clearance for home use.

### **Non-compliance with sales conditions**

**586.** If the purchaser of goods sold in terms of section **581** or **582** fails to comply with any condition subject to which the goods were sold within a timeframe as may be prescribed by rule from the date of sale –

- (a) the sale becomes null and void;
- (b) any amounts paid by the purchaser less expenses incurred with the sale, storage and handling of the goods may be refunded to the purchaser, but the Commissioner is not bound to refund such amounts; and
- (c) the goods may be resold or section **585** may be applied to the goods.

### **Removal of goods following sale of goods**

**587.** (1) Goods sold in terms of section **581** or **582** must promptly be removed from the state warehouse or premises where the goods are kept, provided that –

- (a) the purchase price has been paid; and
- (b) the conditions of sale have been complied with.



(2) If the goods are not removed within a timeframe as may be prescribed by rule from the date of sale of the goods –

- (a) the purchaser becomes liable from that date for any charges contemplated in section **564(1)(a)** and (b) or **574(1)(a)** and (b) and may not remove the goods unless such charges are paid; or
- (b) the customs authority may direct that section **586** be applied to the goods.

### **Tax consequences of goods sold or otherwise disposed of in terms of this Part**

**588.** Goods sold in terms of section **581** or **582** must for tax purposes –

- (a) in the case of imported goods, regarded to be cleared for home use under Chapter **8** insofar as the goods are not already in terms of another provision of this Act regarded to be cleared for home use under that Chapter; or
- (b) in the case of goods that were in free circulation before removed to or accounted for in a state warehouse, regarded to have reverted to free circulation insofar as the goods are not already in terms of another provision of this Act regarded to have reverted to free circulation.

### ***Part 5: Other matters***

#### **Rules to facilitate implementation of this Chapter**

**589.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) the manner in which goods removed to a state warehouse, or retained at or removed to any licensed premises, must be kept, marked, labelled or otherwise dealt with;
- (b) the conditions on which such goods are kept or otherwise dealt with;

#### **Offences in terms of this Chapter**

**590.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section **559(1)(a)** or (b), **560(1)** or (2), **563** or **573(a)** or (b)

(2) The licensee of a state warehouse is guilty of an offence if that licensee contravenes or fails to comply with section **565(1)** or (2) or **566(1)** or (2).

(3) A person –

- (a) who must remove goods in terms of a direction or authorisation is guilty of an offence if that person contravenes or fails to comply with section **570**;
- (b) who has control over or is responsible for goods in connection with which a direction or authorisation was issued in terms of section **565(1)** is guilty of an offence if that person contravenes or fails to comply with section ....; and

(c) in charge of premises where goods are kept in terms of a direction or authorisation was issued in terms of section **565(1)** is guilty of an offence if that person contravenes or fails to comply with section **575(1)**.

(4) A person entitled to goods that have been removed to a state warehouse is guilty of an offence if that person contravenes or fails to comply with section **580(1)**.

(5) A contravention or failure to comply with section **563** or **573(a)** or (b) is a Category 1 offence.

## **CHAPTER 27 REGISTRATION**

### ***Part 1: Introductory provisions***

#### **Purpose of this Chapter**

**591.** The purpose of this Chapter is to provide for the registration of –

- (a) importers and exporters of goods;
- (b) persons acquiring ownership of goods whilst the goods are under a customs procedure;
- (c) persons representing in the Republic importers, exporters, carriers and persons referred to in paragraph (b) not located in the Republic;
- (d) persons submitting electronically to the customs authority any declarations, reports, statements, returns, notices, applications, requests or other documents or communications in terms of this Act or a tax levying Act; and
- (e) any persons involved in any other activities prescribed by rule and required by the Commissioner to register in terms of this Chapter.

#### **Registration of importers and exporters**

**592.** (1) A person who is an importer or exporter as defined in section **1** may be registered in terms of this Chapter as an importer or exporter, respectively.

(2) No goods may be imported into or exported from the Republic unless the person importing or exporting the goods –

- (a) is registered in terms of this Chapter as an importer or exporter; or
- (b) if that person is not located in the Republic,<sup>363</sup> is represented in the Republic by a registered agent located in the Republic.

<sup>363</sup> See section 1(3)(a).

- (3) Subsection (2) does not apply to –
- (a) a person importing or exporting goods that are not required to be cleared in terms of this Act;<sup>364</sup> or
  - (b) any other category of persons exempted by rule from subsection (2).

### **Registration of persons acquiring ownership of goods whilst under customs procedures**

**593.** No person may acquire ownership of goods whilst those goods are under a customs procedure unless that person –

- (a) is registered in terms of this Chapter; or
- (b) if that person is not located in the Republic,<sup>365</sup> is represented in the Republic by a registered agent located in the Republic.

### **Registration of agents for persons not located in Republic**

**594.** (1) No person may for purposes of this Act or a tax levying Act act as the representative in the Republic of an importer, exporter, carrier or person referred to in section **593** who is not located in the Republic<sup>366</sup> unless that person is registered as an agent.

(2) No person may in terms of subsection (1) be registered as an agent unless that person is located in the Republic.

### **Registration of electronic users**

**595.** No person may submit to the customs authority electronically any declaration, report, statement, return, notice, application, request or other document or communication that must be submitted to the customs authority in terms of a requirement of this Act or a tax levying Act unless that person is registered as an electronic user.

### **Registration of other persons**

**596.** The Commissioner may by rule require any person involved in any other activity prescribed by rule, to register in terms of this Chapter.

## ***Part 2: Procedures for registration applications***

### **General requirements**

**597.** An application for registration must –

- (a) be made to the customs authority on an application form prescribed by rule;<sup>367</sup>

<sup>364</sup> See sections **106** and **110**.

<sup>365</sup> See section **1(3)(a)**.

<sup>366</sup> See section **1(3)(a)**.

<sup>367</sup> See section **873**.

- (b) contain the information required on the application form;
- (c) be signed by the applicant;
- (d) be accompanied by such supporting documents and information as may be prescribed by rule; and
- (e) be submitted to any Customs Office or transmitted to the customs authority electronically in accordance with section **879**.

### **Consideration and decision of applications**

**598.** The customs authority –

- (a) may request the applicant to submit any additional information before considering the application; and
- (b) must grant the application unless section **599** applies and the application is refused on a ground set out in that section.

### **Grounds for refusal of applications**

**599.** (1) The customs authority must refuse an application if –

- (a) the applicant is not entitled to registration in terms of a provision of this Act;<sup>368</sup>
- (b) the applicant –
  - (i) has in respect of the application failed to comply with a requirement of this Act; or
  - (ii) has made a false or misleading statement in the application or any supporting document, or has omitted to state a fact, which is material to the consideration of the application; or
- (c) the tax matters of the applicant are not in order as contemplated in section **882A**.

(2) The customs authority may refuse an application if the applicant or an employee of the applicant in a managerial position, or if the applicant is a juristic entity, a director, administrator or trustee of the applicant, has during the five years preceding the application –

- (a) breached this Act or a tax levying Act in a material respect;
- (b) been convicted of an offence under this Act or a tax levying Act; or
- (c) been convicted of an offence involving fraud or dishonesty.

### **Issuing of registration certificates**

**600.** (1) Upon approving an application for registration the customs authority must issue a registration certificate to and in the name of the applicant.

<sup>368</sup> See for instance section **594(2)**.

(2) The registration certificate must within five working days of granting the application –

- (a) be handed to the applicant; or
- (b) sent by registered post or secured electronic means to the applicant.

### **Contents of registration certificates**

**601.** A registration certificate must state –

- (a) the name of the registered person;
- (b) the purpose for which the person is registered;
- (c) a customs code allocated to the registered person; and
- (d) the date from which the certificate takes effect.

### **Registration conditions**

**602.** (1) A registration certificate is subject to conditions as determined by the Act or as may be prescribed by rule in respect of the type of registration certificate concerned.

(2) Conditions prescribed by rule in terms of subsection (1) may, in the case of the registration of a person handling goods, include conditions relating to –

- (a) the protection of potential tax revenue on goods imported, exported, received, stored, handled, transported, processed, manufactured or in any way dealt with, managed or controlled by the registered person in terms of the registration certificate;
- (b) the physical security of such goods;
- (c) the inspection of such goods by customs officers;
- (d) assistance that the registered person must provide to customs officers in implementing this Act or a tax levying Act in relation to such goods; or
- (e) compliance by the registered person with this Act or a tax levying Act in relation to such goods.

(3) It is a condition of registration of a person registered as an electronic user that that person must have and maintain –

- (a) the capability of communicating and receiving electronic documents and messages in a specific electronic format, as may be prescribed by rule; and
- (b) a digital signature approved by the customs authority.

### **Period of validity of registration certificates**

**603.** A registration certificate –

- (a) takes effect from a date specified in the certificate; and
- (b) remains in force for a period of three years from that date.

### ***Part 3: Renewal of registration certificates***

#### **Applications for renewal of registration certificates**

**604.** (1) A person may not later than 30 calendar days before a registration certificate lapses apply for the renewal of the certificate.

(2) Sections **597**, **598** and **599** with the necessary changes as the context may require, apply to applications for the renewal of registration certificates.

(3) If an application for renewal of a registration certificate is not disposed of before the expiry of the validity period of the certificate, the customs authority may extend the validity period of the certificate until the application is disposed of.

#### **Issuing of renewed registration certificates**

**605.** (1) Upon approving an application for the renewal of a registration certificate the customs authority must issue a new registration certificate to and in the name of the applicant.

(2) The new registration certificate must be handed to the applicant or sent by registered post to the applicant within five working days of granting the application.

(3) Sections **600**, **601**, **602** and **603** apply, with the necessary changes as the context may require, to new registration certificates issued in terms of this Part.

### ***Part 4: Suspension or withdrawal of registration***

#### **Grounds of suspension or withdrawal of registration**

**606.** (1) The customs authority must withdraw the registration of a person if that person –

- (a) acquired the registration under false pretences;
- (b) is no longer entitled to registration in terms of a provision of this Act,<sup>369</sup> or
- (c) is sequestered or liquidated.<sup>370</sup>

(2) The customs authority may suspend or withdraw the registration of a person if, during the validity period of the registration –

- (a) the registered person –

<sup>369</sup> See for instance section **594**(2).

<sup>370</sup> The executor or administrator may in such a case apply for a new registration.

- (i) has in a material respect breached any condition applicable to the registration in terms of section **602**; or
  - (ii) has failed to pay to the Commissioner on or before the due date any tax or other amount on any goods for which that person is liable in terms of this Act or a tax levying Act; or
  - (b) the registered person or an employee of the registered person in a managerial position, or if the registered person is a juristic entity, a director, administrator or trustee of the registered juristic entity –
    - (i) has breached a provision of this Act or a tax levying Act in a material respect;
    - (ii) has been convicted of an offence under this Act or a tax levying Act; or
    - (iii) has been convicted of an offence involving fraud or dishonesty.
- (3) Subsection (2)(b) does not apply if the registered person was not a party to, or could not have prevented, or did not benefit in any material respect from, any such contravention, omission or offence by such employee, director, administrator or trustee.

### **Process**

**607.** If the customs authority intends to suspend or withdraw the registration of a person in terms of section **606**, the customs authority must first –

- (a) notify that person by registered post or secured electronic means of –
  - (i) the proposed suspension or withdrawal; and
  - (ii) the reasons for the proposed suspension or withdrawal; and
- (b) give that person an opportunity to submit representations on the proposed suspension or withdrawal within 30 calendar days of the date the notification referred to in paragraph (a) was posted or transmitted to that person.

### **Communication of decisions to suspend or withdraw registration**

**608.** If the customs authority decides to suspend or withdraw the registration of a person, the customs authority must –

- (a) notify the relevant person of the decision, indicating –
  - (i) the period for which the registration is suspended; or
  - (ii) the date from which the registration is withdrawn; and
- (b) in the notification –
  - (i) give reasons for the decision; and
  - (ii) draw that person's attention to the fact that an appeal may be lodged against the decision in terms of Chapter **36**, if such appeal is available in the circumstances of the decision.

### **Part 5: General matters**

#### **Provision of security**

**609.** The customs authority may in terms of Chapter **30** require a registered person to provide security to cover any –

- (a) tax risks referred to in section **671(1)** in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the registered person or by a person for whom the registered person acts as a representative in the Republic; or
- (b) any other risks referred to in section **671(2)**.

#### **Transfer of registration certificates**

**610.** A registration certificate may not be transferred.

#### **Change of circumstances on which applications for registration were granted**

**611.** If any of the circumstances which were material to the granting of a registration has changed, the registered person must –

- (a) notify the customs authority within a timeframe as may be prescribed by rule from the date of the change; and
- (b) submit a fresh application for registration, as may be necessary, reflecting the changed circumstances.

#### **Rules to facilitate implementation of this Chapter**

**612.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) prescribing processes for the amendment of registration certificates to correct errors;
- (b) prescribing simplified registration processes for casual importers or exporters importing or exporting goods below a prescribed value;
- (c) exempting importers or exporters referred to in paragraph (b) from any provisions of this Chapter;
- (d) prescribing registration fees; and
- (e) prescribing conditions of registration.

#### **Offences in terms of this Chapter**

**613.** (1) A person is guilty of an offence if that person –

- (a) imports or exports goods in contravention of section **592(2)**;
- (b) acts as a representative of an importer, exporter or carrier not located in the Republic in contravention of section **594(1)**;
- (c) contravenes section **610**.



- (2) An offence referred to in subsection (1) is a Category 1 offence.

## CHAPTER 27

### LICENSING

#### *Part 1: Introductory provisions*

#### **Definitions**

**614.** For the purposes of this Chapter –

“**applicant**” means a person who intends to submit or has submitted an application;

“**application**” means an application in terms of this Chapter for –

- (a) a licence;
- (b) the renewal of a licence; or
- (c) the amendment of a licence.

#### **Purpose of this Chapter**

**615.** The purpose of this Chapter is to provide for –

- (a) the licensing of premises as –
  - (i) general sea cargo terminals;
  - (ii) special sea cargo terminals;
  - (iii) bulk sea cargo terminals;
  - (iv) container terminals;
  - (v) a combination sea cargo terminal;
  - (vi) sea travellers terminals;
  - (vii) multi-purpose sea cargo terminals;
  - (viii) air cargo terminals;
  - (ix) air cargo depots;
  - (x) air travellers terminals;
  - (xi) rail cargo terminals;
  - (xii) rail travellers terminals;
  - (xiii) international postal clearance depots;
  - (xiv) container depots;
  - (xv) customs warehouses;
  - (xvi) tax free shops;
  - (xvii) IDZ enterprises;
  - (xviii) inward processing premises;
  - (xix) home use processing premises; or

- (xx) state warehouses contemplated in section **558(b)**;
- (b) the licensing of cross-border transmission lines, pipelines, cable-cars and conveyor belts;
- (c) the licensing of carriers;
- (d) the licensing of customs brokers;
- (e) the licensing of stores suppliers; and
- (f) the licensing of any other category of premises or persons as may be specified by rule.

### **Licensing of premises for certain purposes**

**616.** (1) No person may manage, operate or use any premises for a purpose referred to in section **615(a)(i)** to (xvii) unless those premises are licensed in terms of this Chapter for that purpose.

(2) No person may manage, operate or use any premises for the processing of imported goods that are cleared in terms of –

- (a) Chapter **17** for inward processing unless those premises are licensed as inward processing premises for the purpose of processing goods of the kind or category specified in the item in the Customs Tariff under which the goods are cleared for inward processing; or
- (b) Chapter **18** for home use processing unless those premises are licensed as home use processing premises for the purpose of processing goods of the kind or category specified in the item in the Customs Tariff under which the goods are cleared for home use processing.

(3) No person other than the Commissioner may operate any premises as a state warehouse unless those premises are licensed in terms of this Chapter as a state warehouse.

(4) Premises referred to in this section exclude premises where aspects of home use or inward processing are performed by a subcontractor.

### **Licensing of cross-border transmission lines, pipelines, cable-cars and conveyor belts**

**617.** (1) No person may import electricity into the Republic or export electricity from the Republic through a cross-border transmission line unless that transmission line is licensed in terms of this Chapter.

(2) No person may import goods into the Republic or export goods from the Republic through a cross-border pipeline or by way of a cable-car or conveyor belt unless that pipeline, cable-car or conveyor belt is licensed in terms of this Chapter.

### **Licensing of carriers**

**618.** (1) Any person who is a carrier as defined in section 1 may be licensed in terms of this Chapter as a carrier for purposes of this Act.

(2) No carrier may transport goods or travellers into or out of the Republic on board a vessel, aircraft, railway carriage or vehicle operated by that carrier unless that carrier –

- (a) is licensed in terms of this Chapter to transport goods or travellers into or out of the Republic; or
- (b) if that carrier is not located in the Republic,<sup>371</sup> is represented in the Republic by a registered agent located in the Republic.

(3) No carrier may at any place in the Republic load on board a vessel, aircraft, railway carriage or vehicle operated by that carrier any goods that are not in free circulation and transport those goods to another place in the Republic, or through the Republic, unless that carrier –

- (a) is licensed in terms of this Chapter to transport goods that are not in free circulation; or
- (b) if that carrier is not located in the Republic,<sup>372</sup> is represented in the Republic by a registered agent located in the Republic.

(4) Subsection (2) does not apply to a carrier operating a foreign-going vessel or aircraft which transports goods through the Republic without calling or landing at a place in the Republic.

### **Licensing of customs brokers**

**619.** (1) No person may conduct business as a customs broker unless licensed as a customs broker for that type of customs broker business.

(2) No person may be licensed as a customs broker unless that person is located in the Republic.

<sup>371</sup> See section 1(3)(a).

<sup>372</sup> See section 1(3)(a).

### **Licensing of stores suppliers**

**620.** (1) No person may conduct business as a stores supplier unless that person is licensed to undertake such business.

(2) No person may be licensed in terms of subsection (1) unless that person is located in the Republic.

### ***Part 2: Procedures for all applications***

#### **General requirements**

**621.** An application must –

- (a) be made to the customs authority on an application form as may be prescribed by rule;<sup>373</sup>
- (b) contain the information required on the application form;
- (c) be signed by the applicant;
- (d) be accompanied by such supporting documents or information as may be prescribed by rule; and
- (e) be submitted to any Customs Office or transmitted to the customs authority electronically in accordance with section **879**.

#### **Consideration and decision of applications**

**622.** (1) The customs authority –

- (a) may request the applicant to submit any additional information before considering the application; and
- (b) must consider the application if all application requirements have been complied with, and may –
  - (i) grant the application; or
  - (ii) refuse the application.

(2) A decision by the customs authority in terms of subsection (1) must be consistent with this Act.

#### **General grounds for refusal of applications**

**623.** (1) The customs authority must refuse an application if –

- (a) the applicant is not entitled to a license in terms of a provision of this Act;<sup>374</sup>
- (b) the applicant –

<sup>373</sup> See section **873**.

<sup>374</sup> See for instance section **619(2)** and **620(2)**.

- (i) has in respect of the application failed to comply with a requirement of this Act; or
  - (ii) has made a false or misleading statement in the application or any supporting document, or has omitted to state a fact, which is material to the consideration of the application; or
- (c) the tax matters of the applicant are not in order as contemplated in section **882A**.

(2) The customs authority may refuse an application if the applicant or an employee of the applicant in a managerial position, or if the applicant is a juristic entity, a director, administrator or trustee of the applicant, has during the five years preceding the application –

- (a) breached this Act or a tax levying Act in a material respect;
- (b) been convicted of an offence under this Act or a tax levying Act; or
- (c) been convicted of an offence involving fraud or dishonesty.

### **Communication of decisions on applications**

**624.** After the customs authority has reached a decision on an application, the customs authority must –

- (a) notify the applicant of the decision;<sup>375</sup> and
- (b) in the notification –
  - (i) give reasons for the decision to the applicant, if the application has been refused;
  - (ii) set out any special conditions contemplated in section **628(1)(b)** subject to which the licence is to be issued or amended, if the application has been granted; and
  - (iii) draw the attention of the applicant to the fact that an appeal may in terms of Chapter **36** be lodged against the refusal of the application or any such special condition, if such appeal is available in the circumstances of the decision.

### ***Part 3: Application for new licences***

#### **Additional grounds for refusal of applications for licences**

**625.** In addition to the general grounds on which an application for a licence may be refused in terms of section **623**, the customs authority may refuse such an application also on the ground that –

- (a) the applicant does not qualify for the licence concerned in terms of any qualifications that may be prescribed by rule for licences of that kind;

<sup>375</sup> See section **878** for methods of conveying decisions.

- (b) in the case of an application for the licensing of any premises or facility referred to in section **615**(a)(i) to (xx) or (b) –
  - (i) the applicant is not the owner of the premises or facility in respect of which the licence is sought, or does not hold a lease or other right to manage the premises or facility for at least the period for which the license will be valid; or
  - (ii) the premises or facility is not suitably situated for the licence sought;
- (c) in the case of an application for the licensing of premises proposed for a depot, the premises is not –
  - (i) situated within ten kilometres, or such further distance as the customs authority may in a special case allow, from the customs seaport or airport it is proposed to serve; and
  - (ii) serviced by road transport;
- (d) in the case of an application for the licensing of premises for inward processing of goods of a kind or category specified in the Customs Tariff as goods that may be cleared for inward processing, the premises do not comply with a requirement or condition applicable to the clearance of such goods for inward processing; or
- (e) in the case of an application for the licensing of premises for home use processing of goods of a kind or category specified in the Customs Tariff as goods that may be cleared for home use processing, the premises do not comply with a requirement or condition applicable to the clearance of such goods for inward processing.

### **Issuing of licences**

- 626.** (1) If the customs authority decides to grant an application for a licence, the customs authority must issue the licence to and in the name of the applicant.
- (2) The licence must within five working days of granting the application –
- (a) be handed to the applicant; or
  - (b) be sent by registered post or secured electronic means to the applicant.

### **Contents of licences**

- 627.** (1) A licence must state –
- (a) the name of the licensee;
  - (b) the purpose, according to the list contained in section **615**, for which the licence is issued;
  - (c) the address of the licensed premises, if the licence is issued in respect of premises;
  - (d) a customs code allocated to –
    - (i) the licensed premises or cross-border transmission line, pipeline, cable-car or conveyor belt; or

- (ii) the licensed carrier, customs broker or stores supplier;
- (e) any special conditions subject to which the licence is issued;
- (f) the date from which the licence takes effect; and
- (g) any other matters determined by the customs authority.

(2) A licence for a customs warehouse must indicate –

- (a) whether the licence is issued for a public or private warehouse; and
- (b) the purposes for which the warehouse may be used.

### **Licence conditions**

**628.** (1) A licence is subject to –

- (a) any general conditions prescribed by rule in respect of the type of licence concerned; and
- (b) any special conditions determined by the customs authority in respect of the licence to be issued to the applicant.

(2) General conditions prescribed by rule in terms of subsection (1)(a) and any special conditions contemplated in subsection (1)(b) may include conditions relating to –

- (a) the protection of potential tax revenue on goods received, stored, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence;
- (b) the inspection of such goods by customs officers;
- (c) the requirements with which the licensee must comply when such goods are detained, seized or confiscated;
- (d) assistance that the licensee must provide to customs officers in implementing this Act or a tax levying Act in relation to such goods; or
- (e) compliance by the licensee with this Act or a tax levying Act in relation to such goods.

(3) Unless the customs authority determines otherwise in a specific case, it is a condition of each licence that the licensee must be –

- (a) electronically enabled to receive and send messages and documents by electronic means; and
- (b) registered as an electronic user.

### **Conditions in respect of licensed premises**

**629.** (1) General conditions prescribed by rule in terms of section **628(1)(a)** and special conditions contemplated in section **628(1)(b)** in respect of licensed premises may include conditions determining –

- (a) the services that may or must be or may not be provided on the licensed premises;
- (b) the activities that may or must be or may not be carried out on the licensed premises; and
- (c) the categories of goods that may or must be or may not be received, stored, processed, or otherwise dealt with on the licensed premises.

(2) Conditions referred to in subsection (1) may in respect of tax free shops include conditions –

- (a) restricting the category and quantity of goods that may be received or sold in the tax free shop; and
- (b) regulating the receipt of goods in free circulation in the tax free shop and the sale in the tax free shop of those goods together with goods not in free circulation.

### **Conditions in respect of licensed cross-border pipelines, cable-cars and conveyor belts**

**630.** General conditions prescribed by rule in terms of section **628(1)(a)** and special conditions contemplated in section **628(1)(b)** in respect of cross-border pipelines, cable-cars or conveyor belts may include conditions –

- (a) determining the categories of goods that may be conveyed through such a pipeline or by means of such a cable-car or conveyor belt;
- (b) restricting the quantity of goods that may be conveyed through such a pipeline or by means of such a cable-car or conveyor belt; and
- (c) determining technical specifications and other requirements in respect of such a pipeline, cable-car or conveyor belt.

### **Conditions in respect of licensed carriers**

**631.** General conditions prescribed by rule in terms of section **628(1)(a)** and special conditions contemplated in section **628(1)(b)** in respect of licensed carriers may include conditions determining –

- (a) the services that may or must be or may not be provided by the carrier;
- (b) the activities that may or must be or may not be carried out by the carrier;
- (c) the categories of goods that may or must be or may not be transported by the carrier;
- (d) requirements relating to the transport of goods;
- (e) technical specifications and other requirements in respect of vehicles or containers used for the transport of goods;
- (f) requirements for the marking of vehicles or containers used for the transport of goods;
- (g) requirements for the sealing of transported goods; and



- (h) the circumstances in which and the terms on which the transport of goods may be subcontracted to other licensed carriers.

#### **Conditions in respect of licensed customs brokers**

**632.** General conditions prescribed by rule in terms of section **628(1)(a)** and special conditions contemplated in section **628(1)(b)** in respect of licensed customs brokers may include conditions determining the type or types of customs broker business for which the licensee is licensed.

#### **Period of validity of licences**

**633.** (1) A licence –

- (a) takes effect from a date specified in the licence; and  
(b) remains in force for a period of three years from that date unless the licence –  
(i) is withdrawn by the customs authority in terms of Part **6**; or  
(ii) lapses in terms of subsection (2).

(2) A licence issued in respect of premises or a facility referred to in section **615(a)(i)** to (xx) or (b) lapses if the licensee ceases to be the owner of, or the holder of a lease on or other right to manage, those premises or facility.

### ***Part 4: Renewal of licences***

#### **Applications for renewal of licences**

**634.** (1) A licensee may not later than 30 calendar days before the expiry of a licence apply for the renewal of the licence in accordance with section **621**.

(2) If an application for renewal of a licence is not finalised by the customs authority before the expiry of the validity period of the licence, the customs authority may extend the validity period of the licence until the application is finalised.

#### **Additional grounds for refusing applications for renewal**

**635.** In addition to the general grounds on which an application for the renewal of a licence must or may be refused in terms of section **623** or **625**, the customs authority may refuse such an application also on the ground that –

- (a) the applicant has breached in a material respect any general or special condition applicable to the licence in terms of section **628(1)**; or  
(b) the licensee has not engaged in the activity for which the licence was issued for a period of at least one year preceding the date of the application for the renewal of a licence.

### **Issuing of renewed licences**

**636.** (1) If the customs authority decides to grant an application for the renewal of a licence, the customs authority must issue a new licence to and in the name of the applicant.

- (2) The new licence must within five working days of granting the application –
- (a) be handed to the applicant; or
  - (b) sent by registered post or secured electronic means to the applicant.

(3) Sections **627** to **633** apply with the necessary changes as the context may require to new licences issued in terms of this Part.

### ***Part 5: Amendment of licences***

#### **General**

**637.** (1) A licence may be amended –

- (a) on application by the licensee; or
- (b) on initiative of the customs authority.

(2) A licence may be amended by –

- (a) changing, removing or substituting any condition referred to in section **628(1)(b)**, or attaching any new condition;
- (b) extending or limiting the purposes for which the licence was issued;
- (c) updating or changing any detail on the licence; or
- (d) correcting a technical or editorial error.

(3) An amendment to a license takes effect on a date determined by the customs authority.

#### **Applications for amendment of licences**

**638.** A licensee may at any time apply in accordance with section **621** for the amendment of a licence.

#### **Issuing of amended licences**

**639.** (1) If the customs authority decides to grant an application for the amendment of a licence, the customs authority must issue an amended licence to and in the name of the applicant.

(2) The amended licence must within five working days of granting the application

–

- (a) be handed to the applicant; or
- (b) sent by registered post or secured electronic means to the applicant.

### **Purposes for which customs authority may amend licences**

**640.** The customs authority may on own initiative amend a licence –

- (a) if this is necessary for –
  - (i) protecting the state from any loss of tax that may occur on goods received, stored, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence;
  - (ii) the physical security of such goods; or
  - (iii) ensuring that this Act and any applicable tax levying Act is complied with by the licensee; or
- (b) if any circumstances contemplated in section **647(2)** which were material to the initial granting of the licence have changed.

### **Process**

**641.** (1) If the customs authority intends to amend a licence in terms of section **637(1)(b)**, it must first –

- (a) notify the licensee by registered post or secured electronic means of –
  - (i) the proposed amendment; and
  - (ii) the reasons for the proposed amendment; and
- (b) give the licensee an opportunity to submit representations on the proposed amendment within 30 calendar days of the date the notification referred to in paragraph (a) was posted or transmitted to the licensee.

(2) Subsection (1)(b) need not be complied with if the proposal is to amend the licence in a non-substantive way.

### **Communication of decisions to amend licences**

**642.** (1) If the customs authority decides to amend a licence, it must –

- (a) notify the licensee of the decision in accordance with section **624(a)**;
- (b) in the notification draw the licensee's attention to the fact that an appeal may be lodged against the decision in terms of Chapter **36**, if such appeal is available in the circumstances of the decision; and
- (c) issue an amended licence to and in the name of the licensee.

(2) The amended licence must be sent by registered post or secured electronic means to the applicant.

### ***Part 6: Suspension or withdrawal of licences***

#### **Grounds for suspension or withdrawal of licenses**

**643.** (1) The customs authority must withdraw a license of a person if the licensee –

- (a) acquired the license under false pretences;
- (b) is no longer engaged in the activity for which the licence was issued;
- (c) no longer qualifies for the licence in terms of a provision of this Act or a tax levying Act or any qualifications prescribed by rule for the type of licence concerned; or
- (d) is sequestrated or liquidated.

(2) The customs authority may suspend or withdraw a licence if –

- (a) the licensee –
  - (i) has in a material respect breached any general or special condition applicable to the licence in terms of section **628(1)**; or
  - (ii) failed to pay within five working days after it became due any tax or other amount due by the licensee to the Commissioner in terms of this Act or a tax levying Act on any goods received, stored, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence; or
- (b) during the validity period of the licence, the licensee or an employee of the licensee in a managerial position, or if the licensee is a juristic entity, a director, administrator or trustee of the juristic entity –
  - (i) has breached a provision of this Act or a tax levying Act in a material respect;
  - (ii) has been convicted of an offence under this Act or a tax levying Act; or
  - (iii) has been convicted of an offence involving fraud or dishonesty;
- (c) the licensed premises or facility is not operated, managed or used in accordance with this Act; or
- (d) any circumstances contemplated in section **647(2)** which were material to the granting of the licence have changed.

(3) Subsection (2)(b) does not apply if the licensee was not a party to, or could not have prevented, or did not benefit in any material respect from, any such contravention, omission or offence by such employee, director, administrator or trustee.

#### **Process**

**644.** If the customs authority intends to suspend or withdraw a licence in terms of section **643**, it must first –

- (a) notify the licensee by registered post or secured electronic means of –
  - (i) the proposed suspension or withdrawal; and
  - (ii) the reasons for the proposed suspension or withdrawal; and
- (b) give the licensee an opportunity to submit representations on the proposed suspension or withdrawal within 30 calendar days of the date the notification referred to in paragraph (a) was posted or transmitted to the licensee.

### **Communication of decisions to suspend or withdraw licences**

**645.** (1) If the customs authority decides to suspend or withdraw a licence, the customs authority must –

- (a) notify the licensee of the decision in a manner set out in section **624(a)**, indicating –
  - (i) the period for which the licence is suspended; or
  - (ii) the date from which the licence is withdrawn; and
- (b) in the notification draw the licensee's attention to the fact that an appeal may be lodged against the decision in terms of Chapter **36**, if such appeal is available in the circumstances of the decision.

## ***Part 7: General matters***

### **Provision of security**

**646.** The customs authority may in terms of Chapter **30** require a licensee to provide security to cover any –

- (a) tax risks referred to in section **671(1)** in relation to goods received, stored, processed, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence; or
- (b) any other risks referred to in section **671(2)**.

### **Change of circumstances on which applications for licences were granted**

**647.** (1) If any of the circumstances which were material to the granting of an application for a license has changed, the licensee must –

- (a) notify the customs authority within a timeframe as may be prescribed by rule from the date of the change; and
- (b) submit a fresh application for a license or amendment of the license, as may be necessary, reflecting the changed circumstances.

(2) Circumstances material to the granting of an application include –

- (a) the legal status, legal identity or financial soundness of the licensee;
- (b) the physical security of goods received, stored, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence;

- (c) the plant or equipment used in relation to such goods; and
- (d) the system used to keep record of and to account for such goods.

### **Consequences of expiry, lapsing, suspension or withdrawal of licences**

**648.** (1) As from the date of expiry of a license or on which a licence lapses or a suspension or withdrawal takes effect –

- (a) the licensed premises or facility may no longer be managed, operated or used for the purpose for which it was licensed; or
- (b) the licensed person may no longer carry on the activity for which that person was licensed.

(2) Subsection (1) applies in the case of the suspension of a licence only during the period for which the licence is suspended.

(3) The customs authority may despite subsection (1), on such conditions as the customs authority may determine, including conditions relating to the provision of security, allow –

- (a) the activity at the affected premises or facility for which those premises were licensed to be continue with for a period necessary to wind up that activity, or, in the case of a suspension, to bring that activity to a halt; or
- (b) the affected person to continue with the activity for which that person was licensed for a period necessary to wind up that activity, or, in the case of a suspension, to bring that activity to a halt.

(4) (a) The suspension of a licence issued in respect of any premises does not affect the status of those premises as a customs controlled area.

(b) Despite the lapsing or withdrawal of the licence issued in respect of premises or a facility referred to in subsection (3)(a), the premises or facility remain a customs controlled area during the period for which that subsection applies to the premises or facility.

### **Customs authority's powers following expiry, lapsing, suspension or withdrawal of licences**

**649.** If a licence issued in respect of any premises has expired or lapsed or has been suspended or withdrawn, the customs authority may –

- (a) remove, or require the person who is or was the licensee of those premises to remove, all or any specific goods on those premises to a customs controlled area specified by the customs authority;

- (b) take control of those premises, or all or any specific goods on those premises, as may be necessary for –
  - (i) the protection of tax that may be, or become, payable on those goods; or
  - (ii) ensuring compliance with this Act or a tax levying Act;
- (c) place those goods under, or require that person to clear the goods for, a permissible customs procedure; or
- (d) require that person to pay any costs incurred by the Commissioner in carrying out any actions in terms of paragraphs (a), (b) or (c).

### **Transfer of licences**

**650.** A licence may not be transferred. If any premises, facility or business licensed in terms of this Chapter is transferred to another person, that person must first apply for a new license to replace the existing one.

### **Rules to facilitate implementation of this Chapter**

**651.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) supporting documents that must be submitted in respect of an application;
- (b) documents acceptable as proof that the applicant –
  - (i) is the owner of the premises or facility in respect of which a licence is sought; or
  - (ii) holds a lease or other right to manage the premises or facility for at least the period for which the license will be valid;
- (c) requirements for licensed premises or facilities, and standards that must be maintained in respect of such premises or facilities, including requirements and standards relating to security, equipment and services;
- (d) obligatory licence conditions;
- (e) business hours for licensed premises or facilities;
- (f) licensing fees to be paid on licences by licensees;
- (g) requirements relating to the loading, off-loading, receipt, packing, unpacking, consolidating, deconsolidating, storing, processing, delivery, removal or handling in any other way of goods at licensed premises or facilities, as may be appropriate;
- (h) the records, books, accounts and data to be kept by licensees in respect of goods dealt with by licensees in terms of their licences, including, in the case of licensed premises or facilities, the records, books, accounts and data, as may be appropriate, to be kept by licensees in respect of goods loaded, off-loaded, received, packed, unpacked, consolidated, deconsolidated, stored, processed, delivered, removed or in any other way handled at such premises or facilities;

- (i) reporting requirements in respect of goods dealt with by the licensees in terms of their licences;
- (j) requirements to be complied with by licensees –
  - (i) if any person commits a breach in relation to goods dealt with by the licensee in terms of the licence; or
  - (ii) if goods dealt with by the licensees in terms of the licence are –
    - (aa) detained, seized or confiscated; or
    - (bb) damaged, destroyed, lost or unaccounted for;
- (k) requirements and conditions for the removal of goods from licensed premises, and the documents or information that must be presented to licensees of such premises in respect of such removals;
- (l) matters in connection with the inspection of goods by customs officers; and
- (m) accommodation and other facilities, staff and equipment that must be provided by licensees at licensed premises or facilities to enable customs officers to effectively perform their functions.

#### **Offences in terms of this Chapter**

**652.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section **616**(1), (2) or (3), **617**(1) or (2), **618**(2)(a) or (b) or (3), **619**(1), **620**(1), **647**(1), **648**(1)(a) or (b) or **650**.

(2) A contravention of or failure to comply with section **616**(1), (2) or (3), **617**(1) or (2), **618**(2)(a) or (b), **618**(3), **619**(1), **620**(1), **648**(1)(a) or **650** is a Category 1 offence.

## **CHAPTER 29 ACCREDITATION**

#### **Purpose of this Chapter**

**653.** The purpose of this Chapter is to provide for the conferral of accredited client status on licensees and registered persons that –

- (a) have a proven record of compliance with this Act and the tax levying Acts; and
- (b) are capable of complying with accredited client requirements in terms of this Act.

#### **Applications for accredited client status**

**654.** (1) Only a licensee or a person registered in terms of this Act may apply for accredited client status.

(2) An application for accredited client status must –



- (a) be made to the customs authority on an application form prescribed by rule;
- (b) contain the information required on the application form;
- (c) be signed by the applicant;
- (d) be accompanied by such supporting documents and information as may be prescribed by rule; and
- (e) be submitted to any Customs Office or transmitted to the Commissioner electronically in accordance with section 879.

### **Consideration and decision of applications**

**655.** (1) The customs authority –

- (a) may request the applicant to submit any additional information before considering the application; and
- (b) must consider the application if all requirements in respect of applications have been complied with, and may –
  - (i) grant the application; or
  - (ii) refuse the application.

(2) If an application is granted, the customs authority must determine the level of accreditation conferred on the applicant.

(3) A decision by the customs authority in terms of this section must be consistent with this Act.

### **Criteria for accredited client status**

**656.** (1) No application for accredited client status may be granted unless the applicant has –

- (a) a record of compliance with this Act, the Customs and Excise Act or the tax levying Acts during a period of between two to five years preceding the date of the application, as may be prescribed by rule for the category of accreditation, subject to subsection (3);
- (b) an effective accounting, recordkeeping and operational system consistent with generally accepted accounting practice;
- (c) an effective computerised system capable of complying with accredited client requirements;
- (d) skilled staff capable of complying with accredited client requirements;
- (e) sufficient financial resources to comply with accredited client requirements; and
- (f) complied with any other criteria for accredited status as may be prescribed by rule.

- (2) The customs authority must refuse an application –
- (a) if the applicant –
- (i) does not comply with the criteria for accredited client status referred to in subsection (1);
  - (ii) has not in respect of the application complied with a requirement of this Act; or
  - (iii) has made a false or misleading statement in the application or any supporting document, or has omitted to state a fact, which is material to the consideration of the application; or
- (b) if the tax matters of the applicant are not in order as contemplated in section **882A**.

(3) The customs authority may, despite subsection (1)(a), assess an applicant's compliance with customs requirements on the basis of any records and information available to it if –

- (a) a two to five year compliance record referred to in that subsection is not available with respect to the applicant due to the applicant's limited exposure to the South African customs environment or any other good reason; and
- (b) there is no evidence of non-compliance by the applicant with customs requirements in other customs jurisdictions.

### **Communication of decisions on applications**

**657.** After the customs authority has reached a decision on an application, the customs authority must –

- (a) notify the applicant of the decision;<sup>376</sup> and
- (b) in the notification –
- (i) give reasons for the decision to the applicant, if the application has been refused;
  - (ii) set out any special conditions contemplated in section **660**(b) subject to which accredited client status has been granted; and
  - (iii) draw the attention of the applicant to the fact that an appeal may in terms of Chapter **36** be lodged against the refusal of the application or any special condition subject to which accredited client status has been granted, if such appeal is available in the circumstances of the decision.

### **Issuing of accredited client status certificates**

**658.** (1) If the customs authority decides to grant an application, the customs authority must issue an accredited client status certificate to and in the name of the applicant.

<sup>376</sup> See section **878** for methods of conveying decisions.

- (2) The certificate must within five working days of granting the application –
- (a) be handed to the applicant; or
  - (b) sent by registered post or secured electronic means to the applicant.

### **Contents of accredited client status certificates**

- 659.** An accredited client status certificate must state –
- (a) the name of the person to whom the certificate is issued;
  - (b) the purpose for which accredited status is granted;
  - (c) the level of accreditation conferred on the holder of the certificate;
  - (d) any special conditions subject to which the certificate is issued; and
  - (e) the date from which the accredited client status takes effect.

### **Conditions**

- 660.** Accredited client status is subject to –
- (a) any general conditions determined by the Act or prescribed by rule in respect of accredited client status; and
  - (b) any special conditions determined by the customs authority, including the giving of security by the person to whom the certificate is issued.

### **Period of validity of accredited client status certificates**

- 661.** (1) An accredited client status certificate –
- (a) takes effect from a date specified in the certificate; and
  - (b) remains in force for a period of three years from that date unless the certificate –
    - (i) is withdrawn by the customs authority earlier; or
    - (ii) lapses earlier in terms of subsection (2) or (3).
- (2) An accredited client status certificate of a registered person lapses before the expiry of the three years period for which it was issued if the registration of that person –
- (a) expires and is not renewed in terms of Part **3** of Chapter **27**;
  - (b) is suspended or withdrawn in terms of Part **4** of Chapter **27**.
- (3) An accredited client status certificate of a licensee lapses before the expiry of the three years period for which it was issued if the licence of the licensee –
- (a) expires and is not renewed in terms of Part **4** of Chapter **28**;
  - (b) lapses in terms of section **633(2)**; or
  - (c) is suspended or withdrawn in terms of Part **6** of Chapter **28**.

### **Non-compliance with criteria for accredited client status**

**662.** The holder of an accredited client status certificate must immediately notify the customs authority if that person is at any time during the period of validity of the certificate no longer in compliance with any of the criteria for accredited client status as set out in section **656(1)**.

### **Renewal of accredited client status certificates**

**663.** (1) The holder of an accredited client status certificate may not later than 30 calendar days before a certificate lapses apply for the renewal of the certificate.

(2) Sections **654(2)** and **655** to **661**, with the necessary changes as the context may require, apply to an application for the renewal of an accredited client status certificate and the issuing of a new accredited client status certificate.

### **Suspension or withdrawal of accredited client status certificates**

**664.** (1) The customs authority must withdraw an accredited client status certificate if the holder of the certificate –

- (a) acquired the certificate under false pretences; or
- (b) is no longer in compliance with any of the criteria for accredited client status as set out in section **656(1)**.

(2) The customs authority may suspend or withdraw an accredited client status certificate if –

- (a) the holder of the certificate –
  - (i) has in a material respect breached any condition applicable to the certificate in terms of section **660**; or
  - (ii) has failed to pay to the Commissioner within five calendar days after it became due, any tax or other amount for which that person is liable in terms of this Act or a tax levying Act; or
- (b) during the validity period of the certificate, the holder of the certificate or an employee of the holder of the certificate in a managerial position, or if the holder of the certificate is a juristic entity, a director, administrator or trustee of that juristic entity –
  - (i) has in a material respect breached a provision of this Act or a tax levying Act;
  - (ii) has been convicted of an offence under this Act or a tax levying Act; or
  - (iii) has been convicted of an offence involving fraud or dishonesty.

(3) Subsection (2)(b) does not apply if the holder of the certificate was not a party to, or could not have prevented, or did not benefit in any material respect from, any such breach or offence by such employee, director, administrator or trustee.

### **Process for suspension or withdrawal of accredited client status certificates**

**665.** If the customs authority intends to suspend or withdraw an accredited client status certificate in terms of section **664**, the customs authority must first –

- (a) notify the holder of the certificate electronically of –
  - (i) the proposed suspension or withdrawal; and
  - (ii) the reasons for the proposed suspension or withdrawal; and
- (b) give the holder of the certificate an opportunity to submit representations on the proposed suspension or withdrawal within 30 calendar days of the date the notification referred to in paragraph (a) was transmitted to the holder of the certificate.

### **Communication of decisions to suspend or withdraw accredited client status certificates**

**666.** (1) If the customs authority decides to suspend or withdraw an accredited client status certificate, the customs authority must –

- (a) notify the holder of the certificate electronically of the decision, indicating –
  - (i) the period for which the certificate is suspended; or
  - (ii) the date from which the certificate is withdrawn; and
- (b) in the notification –
  - (i) give reasons for the decision; and
  - (ii) draw the attention of the holder of the certificate to the fact that an appeal may be lodged against the decision in terms of Chapter **36**, if such appeal is available in the circumstances of the decision.

(2) The holder of an accredited client status certificate which has been withdrawn must return the certificate to the customs authority within three working days of receiving the notice of withdrawal.

### **Benefits of accreditation**

**667.** (1) The Commissioner must by rule prescribe the benefits of persons on whom accredited client status has been conferred, which may include –

- (a) exemption from specific requirements of this Act or a tax levying Act;
- (b) clearing and obtaining release of goods in accordance with simplified and expedited clearance and release requirements;
- (c) submitting and obtaining customs processing of documents in accordance with

- simplified and expedited processes;
- (d) deferment of tax on goods; and
- (e) simplified tax payment methods.

(2) Different benefits may be prescribed in terms of subsection (1) for different levels of accreditation.

#### **Rules to facilitate implementation of this Chapter**

**668.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) accredited client requirements for holders of accredited client status certificates;
- (b) the different levels of accreditation that may be conferred on holders of such certificates;
- (d) requirements and procedures for designating licensees and registered persons involved in international supply chains as authorised economic operators to facilitate the implementation of security measures in international trade; and
- (e) general conditions in respect of accredited client status.

#### **Offences in terms of this Chapter**

**669.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section **654**(1).

(2) The holder of accredited client status is guilty of an offence if that person fails to comply with section **662** or **666**(2).

### **CHAPTER 30**

#### **SECURITY FOR PAYMENT OF TAX AND OTHER MONEY OWED TO COMMISSIONER**

##### **Purpose of this Chapter**

**670.** (1) The purpose of this Chapter is to enable the customs authority to require that security be provided to the Commissioner in order –

- (a) to protect the National Revenue Fund from loss of import or export tax on goods that is or may become payable in terms of a tax levying Act or this Act; or
- (b) to ensure payment of any other money owed to the Commissioner in terms of this Act or a tax levying Act.

##### **When security may be required**

**671.** (1) The customs authority may require security in respect of any goods on which

import or export tax is or may become payable in terms of a tax levying Act or this Act if, for any reason, the payment or recovery of the tax on those goods is or will be at risk, including to cover any tax risk in relation to –

- (a) goods imported into or to be exported from the Republic;
- (b) goods loaded, off-loaded, received, packed, unpacked, consolidated, deconsolidated, stored, processed, delivered, removed or in any other way handled –
  - (i) at licensed premises or facilities; or
  - (ii) in terms of section 648(3) at premises or facilities of which the license has expired or lapsed or been suspended;
- (c) goods not in free circulation transported in or through the Republic;
- (d) goods released for home use if import tax payable on those goods is not paid before the release of the goods for home use;<sup>377</sup>
- (e) goods released for outright export from the Republic if export tax payable on those goods is not paid before the release of the goods for outright export;<sup>378</sup>
- (f) goods released for a customs procedure;
- (g) goods conditionally released for home use or a customs procedure;
- (h) goods on which tax is deferred;<sup>379</sup>
- (i) goods conditionally excluded or exempted from a provision of this Act or a tax levying Act; and
- (j) any other goods that are subject to customs control, if for any reason the payment or recovery of tax is or will be at risk.

(2) The customs authority may require security to ensure the collection of any other money which is or may become payable to the Commissioner in terms of this Act or a tax levying Act, if for any reason the collection of that money is or will be at risk.

### **Persons from whom security may be required**

**672.** (1) Security referred to in section 671(1) may be required from any person who is or may become liable for the payment of any import or export tax on the relevant goods in terms of a tax levying Act or this Act or who for any reason acquires or may acquire physical control of goods not in free circulation, including, in relation to –

- (a) goods imported into or exported from the Republic by –
  - (i) a registered importer or exporter, from that registered importer or exporter; or
  - (ii) an importer or exporter not located in the Republic and represented in the Republic by a registered agent, from the registered agent of that importer or exporter.

<sup>377</sup> For instance when clearance and release of goods are expedited in terms of Chapter 23.

<sup>378</sup> For instance when clearance and release of goods are expedited in terms of Chapter 23.

<sup>379</sup> For instance sections 24 of the Customs Duty Act.

- (b) goods that are cleared for home use or a customs procedure, from the person who –
  - (i) clears the goods; or
  - (ii) submits a clearance declaration for the clearance of the goods on behalf of another;
- (c) goods released for home use or a customs procedure, from the person to whom the goods are released;
- (d) goods released for the temporary admission or temporary export procedure on authority of a CDP or ATA carnet, from the guaranteeing association guaranteeing that carnet;
- (e) goods loaded, off-loaded, received, packed, unpacked, consolidated, deconsolidated, stored, processed, delivered, removed or in any other way handled at licensed premises or a licensed facility, from the licensee of the premises or facility; or
- (f) goods transported by –
  - (i) a licensed carrier, from that licensed carrier; or
  - (ii) a carrier not located in the Republic and represented in the Republic by a registered agent, from that registered agent.

(2) Security referred to in section **671(2)**, may be required from a person who is or may become liable for the payment of the money owed to the Commissioner.

#### **Time when security may be required**

**673.** (1) The customs authority may require security in terms of section **671(1)** or (2) at any time during which the payment or recovery of the tax or other money is or will be at risk, including as a pre-condition for –

- (a) the release of the goods for home use or a customs procedure;
- (b) the issuing or renewal of a licence, or at any time after a licence has been issued or renewed;
- (c) the issuing or renewal of a registration certificate, or at any time after a registration certificate has been issued or renewed; and
- (d) the granting of any approval,<sup>380</sup> permission, authorisation, recognition or exemption in terms of this Act.

(2) If the risk in relation to the payment or recovery of the tax or other money for which security was given for any reason changes, the customs authority may require the person who has given the security to alter the form, nature or amount of the security or to renew the security as the customs authority may determine.

<sup>380</sup> For instance approval granted in terms of section **267** to a guaranteeing association to guarantee any tax that may become payable on goods imported into the Republic and placed under the temporary admission procedure on authority of a CPD or ATA carnet.



### **Determination of amount of security**

**674.** (1) Security in terms of this Chapter must be risk based.

(2) When determining the amount of security required, the customs authority must take into account all relevant factors, including –

- (a) an assessment of the risk to the National Revenue Fund, and the monetary extent of that risk, to be covered by the security;
- (b) if the person who is to provide the security is a licensee or registered person –
  - (i) the annual turnover of that person's business as a licensee or registered person;
  - (ii) the type of licence or registration issued; and
  - (iii) whether that person has accredited client status, and if so, the level of accreditation; and
- (c) any factors as may be prescribed by rule.

(3) When determining the monetary extent of a tax risk, the customs authority must also take into account –

- (a) the relevant person's record of compliance with tax obligations;
- (b) the likelihood of any interest becoming payable in respect of the tax; and
- (c) the fact that such interest may be recoverable as if part of the tax.<sup>381</sup>

### **Forms of security**

**675.** (1) Security in terms of this Chapter may be in the form of –

- (a) a surety bond issued on behalf of the person required to give security –
  - (i) by a financial institution approved by the Commissioner;
  - (ii) on conditions approved by the Commissioner; and
  - (iii) complying with such requirements and containing such particulars as may be prescribed by rule;
- (b) any security allowed in terms of an international clearance arrangement; or
- (c) another kind of security as may be prescribed by rule.

(2) Security in terms of subsection (1) must either be –

- (a) specific security to cover any tax or other money that is or may become payable by the person giving the security on specific goods or a specific consignment or consignments of goods; or

<sup>381</sup> See for instance section 44 of the Customs Duty Act.

- (b) general security to cover any tax or other money that is or may become payable by the person giving the security on any goods or kind of category of goods during a specified or indefinite period.

### **Security details**

**676.** Security provided in terms of section **675**, or a document accompanying the security, must –

- (a) indicate whether it is a specific or general security;
- (b) specify –
  - (i) the name and address of the person giving the security;
  - (ii) the purpose for which the security is given, and if given in relation to specific goods or a specific kind or category of goods, those goods or that kind or category of goods;
  - (iii) the goods covered by the security;<sup>382</sup>
  - (iv) the amount of the security; and
  - (v) the validity period of the security; and
- (c) contain such other detail as may be prescribed by rule.

### **Utilisation of security**

**677.** (1) Security provided in terms of section **675** may be utilised only for the payment or recovery of tax or other money owed to the Commissioner –

- (a) in respect of the goods for which the security was given; and
- (b) for which the person who has given the security is liable, except as otherwise provided in terms of any applicable tax levying Act.

(2) The customs authority must promptly return any security to the person who has given the security if –

- (a) the validity period of the security has expired and the security was not utilised in terms of subsection (1); or
- (b) the purpose for which the security was given has lapsed.

### **Rules to facilitate implementation of this Chapter**

**678.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) the conditions on which security may be provided by financial institutions on behalf of persons required to provide security;

<sup>382</sup> Security is not necessarily consignment based.

- (b) the conditions for the substitution of, or the amendment of the amount of or other detail in relation to, security; and
- (c) the manner and circumstances in which tax or other money owed to the Commissioner may be recovered from security provided in terms of this Chapter.

## CHAPTER 31

### RECOVERY OF DEBT DUE UNDER THIS ACT<sup>383</sup>

#### Purpose of this Chapter

**679.** The purpose of this Chapter is to provide for the recovery by the Commissioner of money owed to the Commissioner in terms of this Act, including –

- (a) any administrative penalty;
- (b) any costs or expenses incurred and recoverable by the Commissioner from another person in terms of this Act;
- (c) the proceeds of the sale of goods in terms of section **581** or **582**; and
- (d) any interest referred to in section **686** on amounts not paid on due date.

#### Money owed to Commissioner constitutes a debt due for credit of National Revenue Fund

**680.** (1) Money owed to the Commissioner in terms of this Act –

- (a) is a debt due to the Commissioner for credit of the National Revenue Fund, subject to subsection (2); and
- (b) must be recovered by the Commissioner in accordance with this Chapter and any other applicable provisions of this Act.

(2) (a) If costs or expenses referred to in section **679**(b) were paid from SARS' own funds, the amount of those costs or expenses, including any interest on that amount, is a debt due to the Commissioner for credit of SARS.

(b) The proceeds of the sale of goods referred to in section **679**(c) must be applied in accordance with section **584**.

#### Recovery of debt

**681.** A debt referred to in section **680** may be recovered from –

- (a) the person liable for the debt; or
- (b) any security provided by that person covering that debt.

<sup>383</sup> This Chapter does not cover the recovery of tax, administrative penalties imposed in connection with tax and interest on outstanding tax and penalties. These recoveries are dealt with in the respective tax levying Acts, for instance Chapter **3** of the Customs Duty Act.

### **Recovery of debt from agents**

**682.** If a person mentioned in section **681**(a) is not located in the Republic<sup>384</sup> or fails to pay the debt when required to do so, and has not provided security from which the Commissioner may recover the debt, the Commissioner may recover the debt from –

- (a) the registered agent of that person in the Republic;
- (b) any person who, in connection with the debt or any goods in respect of which the debt is due –
  - (i) acted as, or gave out to be, the agent of the person liable for the debt; or
  - (ii) acted in a fiduciary capacity; or
- (c) any security provided by a person referred to in paragraph (a) or (b) covering that debt.

### **Liability of persons managing juristic entities**

**683.** If a person mentioned in section **681** or **682** as a person from whom a debt may be recovered, is a juristic entity and that juristic entity fails to pay the debt when required to do so, and has not provided security from which the Commissioner may recover the debt, the Commissioner may recover the debt from a person managing the juristic entity, but only –

- (a) after the Commissioner has taken reasonable steps to recover the debt from the entity itself; and
- (b) if non-payment of the debt was the direct result of that person's negligence or mismanagement of the entity's affairs.

### **Under-recovery of debt**

**684.** (1) The customs authority must, subject to subsection (2), correct any under-recovery in the amount of a debt referred to in section **680** by recovering the amount under collected from –

- (a) the person who partially paid that debt;
- (b) any person from whom that debt could have been recovered in terms of section **681**, **682** or **683**; or
- (c) any security provided by a person referred to in paragraph (a) or (b) covering that debt.

(2) If the amount of an under-recovery is less than R100, the customs authority may but is not obliged to recover the under-recovery.

### **Debt recovered from security**

<sup>384</sup> See section 1(3)(a).

**685.** A person liable for any debt referred to in section **680** is absolved from liability towards the Commissioner if the debt is recovered in full from any security referred to in section **681**, **682** or **683**.

#### **Interest on outstanding amounts**

**686.** (1) A debt referred to in section **679(a)**, (b) or (c) not paid on the due date bears interest at a rate determined by the Minister.

(2) Interest determined in terms of subsection (1) must be calculated on daily balances owing and compounded at the end of each month.

(3) This section does not apply to –

- (a) a person liable for a debt in terms of subsection (1) who on good grounds is exempted by the Commissioner from paying interest on the debt; or
- (b) a prosecution avoidance penalty.

#### **Payment of debt in instalments**

**687.** The Commissioner may allow debt referred to in section **680**, other than a prosecution avoidance penalty, to be paid in instalments, subject to the payment of interest in terms of section **686** on outstanding balances.

#### **Persons having accounts with Commissioner**

**688.** (1) If a person has an account with the Commissioner for the payment of tax and other money owed to the Commissioner in terms of this Act or a tax levying Act, any amount –

- (a) paid by that person to the Commissioner may be debited against that account; or
- (b) refunded by the Commissioner to that person may be credited to that account.

(2) The customs authority must give notice to a person of any amounts debited to or credited against that person's account.

#### **Establishing of liens over goods to secure payment of debts**

**689.** (1) In order to secure payment to the Commissioner of a debt due to the Commissioner for credit of the National Revenue Fund in terms of section **680**, a lien in favour of the Commissioner may be established over any goods –

- (a) of which the debtor is the owner;
- (b) of which the debtor is the co-owner; or

- (c) in which the debtor has any title, right or interest in terms of a credit agreement under the National Credit Act, 2005 (Act No. 34 of 2005).

(2) When utilising subsection (1) in respect of a debt referred to in subsection (1), Part 4 of Chapter 3 of the Customs Duty Act applies with any necessary changes the context may require.

#### **Other mechanisms for recovery of debt**

**690.** Part D of Chapter 11 of the Tax Administration Act, 2010, applies, with any necessary changes as the context may require, to the recovery of a debt referred to in section **680** due to the Commissioner for credit of the National Revenue Fund.

#### **Rules to facilitate implementation of this Chapter**

**691.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) the methods that may or must be used to pay any debt referred to in section **680** to the Commissioner, including –
- (i) limits on cash payments; and
  - (ii) conditions for payments by cheque.
- (b) receipts and other documents and other evidence that may be used as proof of payment of any debt.

#### **Offences in terms of this Chapter**

**692.** A person is guilty of an offence if that person –

- (a) fails to comply with section **58(1)**, **59(1)**, **60(1)** or **61(1)** or (4)(a) of the Customs Duty Act in relation to a lien established over goods in terms of section **689** of this Act;
- (b)

## CHAPTER 32 GENERAL ENFORCEMENT FUNCTIONS

### *Part 1: Introductory provisions*

#### **Purpose and application of this Chapter**

**693.** (1) The purpose of this Chapter is to assign enforcement functions to customs officers for the effective enforcement of this Act<sup>385</sup> or a tax levying Act, and, in particular, to the extent reasonable in the circumstances –

- (a) to ensure that tax and any other money owed to the Commissioner in terms of this Act or a tax levying Act is paid;
- (b) to ensure that goods that are subject to customs control are dealt with in accordance with this Act; and
- (c) to prevent, investigate and take appropriate action against acts or omissions constituting breaches of this Act or a tax levying Act.

(2) The enforcement functions conferred on customs officers in terms of this Chapter –

- (a) are additional to the other enforcement functions assigned to customs officers in terms of the other provisions of this Act or a tax levying Act; and
- (b) must be exercised with due regard to other applicable legislation.

(3) This Chapter applies to all goods that in whatever way have become subject to customs control in terms of this Act.

### ***Part 2: Access to, and inspection and search of, premises, vessels, aircraft, trains, railway carriages and vehicles***

#### **Access to premises**

**694.** (1) A customs officer has unqualified access to any premises consisting of or situated within a customs controlled area and may at any time, for the purpose of this Act or a tax levying Act, enter, inspect and search any such premises.

(2) A customs officer may, subject to section **695**, at any time for the purpose of this Act or a tax levying Act enter, inspect and search any premises outside a customs controlled area –

<sup>385</sup> It should be noted that this Chapter confers enforcement functions to customs officers also in relation to goods in the customs environment that are prohibited, restricted or controlled in terms of other legislation. This enforcement is however done in terms of direct powers conferred on customs officers as part of their duties in terms of this Act.

- (a) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find any goods –
  - (i) that are subject to customs control;
  - (ii) in respect of which a breach of this Act or a tax levying Act is being or has been committed;
  - (iii) that are being used or that have been used for an activity that constitutes a breach of this Act or a tax levying Act; or
  - (iv) that are prohibited, restricted, sectorally controlled or counterfeit goods;
- (b) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any documents concerning –
  - (i) any goods described in paragraph (a); or
  - (ii) any activity that constitutes a breach of this Act or a tax levying Act; or
- (c) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any persons having information concerning –
  - (i) any goods described in paragraph (a);
  - (ii) any documents described in paragraph (b); or
  - (iii) any activity that constitutes a breach of this Act or a tax levying Act; or
- (d) which is used, or which the customs officer on reasonable grounds suspects is being used, for an activity which constitutes a contravention of this Act or a tax levying Act.

(3) A person in charge of any premises referred to in subsection (1) or (2), and any person who works or resides on or in such premises, must provide and make available such facilities at such premises as may be reasonably required by the customs officer for entering, inspecting or searching the premises.

#### **Access to premises used for residential purposes**

**695.** (1) When acting in terms of section 694(2), a customs officer may not without a warrant issued by a magistrate or judge enter or search –

- (a) any premises which is used for residential purposes; or
- (b) if only a part of any premises is used for residential purposes, that part which is used for residential purposes.

(2) A magistrate or judge may issue a warrant contemplated in subsection (1) only on written application by a customs officer setting out under oath or affirmation the grounds why it is necessary to enter, inspect or search the relevant premises or part of the premises.



(3) A customs officer may enter, inspect or search without a warrant any premises or part of any premises which is used for residential purposes if –

- (a) the person in control of the premises or that part consents to the entry, inspection or search; or
- (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that might be caused by applying for a warrant would defeat the object of the entry, inspection or search.

(4) This section does not apply to the entry, inspection or search of any premises within a customs controlled area.

### **Use of force to gain access to or to inspect or search premises**

**696.** (1) No person may stop or prevent a customs officer from entering, inspecting or searching any premises in terms of section **694** or **695**, but a person in control of the premises, or of any entrance to the premises is entitled to demand that the customs officer –

- (a) produce his or her identity card referred to in section **13**; and
- (b) explain the purpose of the entry, inspection or search.

(2) If the customs officer is not immediately, or not immediately after having complied with any demand in terms of subsection (1), allowed to enter or to carry out the inspection or search, the customs officer may use force to the extent necessary in the circumstances to gain entry or to carry out the inspection or search, including –

- (a) by searching any person for the keys to –
  - (i) the premises; or
  - (ii) any room, enclosure, place, safe, chest, box, package or container on or in the premises;
- (b) by opening in any manner the premises, or any such room, enclosure, place, safe, chest, box, package or container, if it is locked and the keys are not produced on demand or are otherwise not available;
- (c) as a last resort, by breaking through any fence, wall, roof or ceiling, or breaking open any door or window, or breaking open any such safe, chest, box, package or container; or
- (d) by breaking up any ground or flooring.

### **Powers to stop, board and search vessels, aircraft, trains, railway carriages and vehicles**

**697.** (1) A customs officer has unqualified access to any vessel, aircraft, train, railway carriage or vehicle within a customs controlled area and may, for the purpose of this Act or a

tax levying Act, board, inspect and search any such vessel, aircraft, train, railway carriage or vehicle.

(2) A customs officer may, for the purpose of this Act or a tax levying Act, board, inspect and search any vessel, aircraft, train, railway carriage or vehicle outside a customs controlled area –

- (a) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any goods –
  - (i) that are subject to customs control;
  - (ii) in respect of which a breach of this Act or a tax levying Act is being or has been committed;
  - (iii) that are being used or that have been used for an activity that constitutes a breach of this Act or a tax levying Act; or
  - (iv) that are prohibited, restricted, sectorally controlled or counterfeit goods;
- (b) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any documents concerning –
  - (i) any goods described in paragraph (a); or
  - (ii) any activity that constitutes a breach of this Act or a tax levying law; or
- (c) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any persons having information concerning –
  - (i) any goods described in paragraph (a);
  - (ii) any documents described in paragraph (b); or
  - (iii) any activity that constitutes a breach of this Act or a tax levying law; or
- (d) which has been, or which the customs officer on reasonable grounds suspects to have been, specifically constructed, adapted, altered or fitted in any manner for the purpose of concealing goods.

(3) A customs officer may for the purpose of implementing subsection (2), at any time –

- (a) order the on-board operator of a vessel or vehicle to stop, or the pilot of an aircraft to land; or
- (b) if necessary and possible, force the vessel, aircraft or vehicle to stop or land, as the case may be.

### **Roadblocks for vehicles**

**698.** (1) The customs authority may apply to the national or a provincial commissioner of police for written authorisation in terms of section 13(8) of the South African Police Service

Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint outside a customs controlled area for enforcing this Act or a tax levying Act.

(2) At a roadblock referred to in subsection (1) a customs officer may randomly stop vehicles and –

- (a) check whether any customs documentation is in order; and
- (b) exercise in relation to the vehicle and any goods and persons on board the vehicle any other enforcement functions conferred on a customs officer.

(3) Only a customs officer in the official customs uniform may stop vehicles in terms of subsection (2).

### **Use of force to gain access to or to inspect or search vessels, aircraft, trains, railway carriages and vehicles**

**699.** (1) No person may prevent a customs officer from boarding, inspecting or searching any vessel, aircraft, train, railway carriage or vehicle in terms of section **697** or **698**, but the on-board operator of the vessel, aircraft, train, railway carriage or vehicle is entitled to demand that the customs officer –

- (a) produce his or her identity card referred to in section **13**; and
- (b) explain the purpose of the entry, inspection or search.

(2) If the customs officer is not immediately, or not immediately after having complied with any demand in terms of subsection (1), allowed to board or to carry out the inspection or search, the customs officer may use any necessary force to gain access or to carry out the inspection or search, including –

- (a) by searching any person for the keys to the vessel, aircraft, train, railway carriage or vehicle or to any cabin, safe, chest, box, package or container on or in the vessel, aircraft, train, railway carriage or vehicle;
- (b) by opening in any manner any cabin, safe, chest, box, package or container on or in the vessel, aircraft, train, railway carriage or vehicle, if it is locked and the keys are not produced on demand or are otherwise not available; or
- (c) as a last resort, by breaking open the vessel, aircraft, train, railway carriage or vehicle or any such cabin, safe, chest, box, package or container.

### **Searching of premises, vessels, aircraft, trains, railway carriages or vehicles**

**700.** (1) When searching any premises, vessel, aircraft, train, railway carriage or vehicle in terms of this Chapter, a customs officer –

- (a) has free access to every part of the premises, vessel, aircraft, train, railway carriage or vehicle;
- (b) may rummage any part of the premises, vessel, aircraft, train, railway carriage or vehicle;
- (c) may for the purpose of enforcing this Act or a tax levying Act fasten down the hatchways of any vessel, or mark, lock up, seal or otherwise secure any goods or documents found on or in the premises, vessel, aircraft, train, railway carriage or vehicle; or
- (d) may search in accordance with section **701** any person found on or in the premises, vessel, aircraft, train, railway carriage or vehicle.

(2) If any hatchways of a vessel have been fastened down, or any goods or documents have been marked, locked up, sealed or otherwise secured in terms of subsection (1)(c) –

- (a) no person may without the permission of a customs officer –
  - (i) open such hatchways;
  - (ii) open, break, destroy, alter or in any way tamper with such lock, seal or mark; or
  - (iii) remove such goods or documents; and
- (b) the person in charge of the premises, or the on-board operator of the vessel, aircraft, train, railway carriage or vehicle, must take all steps reasonable in the circumstances to prevent any contravention of paragraph (a) of this subsection.

### ***Part 3: Stopping, calling on and searching of persons***

#### **Stopping or calling on persons**

- 701.** (1) A customs officer may, for the purpose of this Act or a tax levying Act –
- (a) stop or call on any person in a customs controlled area, including any traveller or crew member who has entered the Republic or is in the process of leaving the Republic; and
  - (b) request that person to produce any or all goods or documents which that person –
    - (i) has with him or her;
    - (ii) has brought into the Republic; or
    - (iii) intends to take out of the Republic
- (2) A customs officer may, for the purpose of this Act or a tax levying Act –
- (a) stop or call on any person outside a customs controlled area, including any traveller or crew member who has entered the Republic or is in the process of leaving the

Republic, who has, or on reasonable grounds is suspected by a customs officer to have, with him or her –

- (i) any goods that are subject to customs control or in respect of which a breach of this Act or a tax levying Act is being or has been committed; or
- (ii) any documents concerning –
  - (aa) any goods that are subject to customs control or in respect of which a breach of this Act or a tax levying Act is being or has been committed; or
  - (bb) any activity which constitutes a breach of this Act or a tax levying Act; and
- (b) request that person to produce the goods or documents referred to in paragraph (a).

(3) If a person referred to in subsection (1) or (2) fails to stop when requested by a customs officer to do so, the customs officer may take such action, including the use of any necessary force to stop that person.

### **Searching of persons**

**702.** (1) A customs officer may search a person stopped or called on in terms of section **701**(1) or (2)–

- (a) if that person refuses to comply with a request in terms of that section to produce any goods or documents referred to in that section; or
- (b) if the customs officer on reasonable grounds suspects that that person is concealing –
  - (i) any goods or documents which that person was requested to produce;
  - (ii) any goods in respect of which a breach of this Act or a tax levying Act is being or has been committed; or
  - (iii) any documents concerning any goods referred to in paragraph (b).

(2) A customs officer may, for purposes of subsection (1) and to the extent necessary in the circumstances, conduct –

- (a) a search of any goods the person may have with him or her;
- (b) a frisk search of the person in accordance with section **703**; and
- (c) an external bodily search of the person in accordance with section **704**.

(3) If a person refuses to be searched, the customs officer may take such action, including the use of any necessary force to search that person.

### **Frisk searches**

**703.** (1) When conducting a frisk search of a person, a customs officer may move his or her hands briskly over the person's body on top of the person's clothing, in order to detect any concealed –

- (a) weapon or object capable of being used to inflict bodily injury; or
- (b) goods that are subject to customs control or in respect of which a breach of this Act or a tax levying Act is being or has been committed.

(2) A frisk search may only be conducted by a customs officer who is of the same gender as the person being searched.

### **External bodily searches**

**704.** (1) The customs officer conducting an external bodily search of a person may request the person being searched to remove any outer garments that may hamper the search.

(2) When conducting an external bodily search of a person, a customs officer may, subject to subsection (3), make use of –

- (a) any mechanical, electrical, imaging or electronic equipment that can produce an indication that the person may be concealing any specific thing or substance on or in his or her body or in any goods that that person has with him or her;
- (b) sniffer dogs or other animals trained to use their senses for the detection of any specific thing or substance; or
- (c) any other search aids as may be prescribed by rule.

(3) A search aid referred to in subsection (2) may only be used by a customs officer trained to use such aid in the conduct of an external bodily search.

(4) An external bodily search may only be conducted –

- (a) by a customs officer who is of the same gender as the person being searched; and
- (b) in a place that affords adequate personal privacy to the person being searched.

(5) A person being subjected to an external bodily search may request the presence of another person during the search.

### **Internal bodily searches**

**705.** (1) When a customs officer, after conducting an external bodily search in terms of section **704**, on reasonable grounds suspects that a person is internally concealing goods in respect of which a breach of this Act or any tax levying Act is being or has been committed,

the officer may detain the person and arrange for an internal bodily search to be conducted subject to subsection (2) as soon as practicable. Any detention in terms of this subsection must be under supervision of a medical practitioner.

- (2) An internal bodily search may be conducted only –
- (a) by a registered medical practitioner at a place equipped for the carrying out of medical procedures required for an internal bodily search of the kind in question; and
  - (b) on authority of a warrant authorising the search: Provided that an internal bodily search may be conducted without a search warrant if –
    - (i) the person to be subjected to the internal bodily search consents to the search; or
    - (ii) there is a medical emergency justifying a warrantless search.

(3) No person other than the medical practitioner performing the search may be present during an internal bodily search, except when the person being subjected to the search requests the presence of another person.

#### **Searches of children**

**706.** (1) A child may be searched in terms of section **703**, **704** or **705** only in the presence of –

- (a) that child's parent or guardian; or
- (b) if the child is travelling without a parent or guardian, another person who is responsible for the child during travelling.

(2) No child may be subjected to an internal bodily search in terms of section **705** except when public health or safety is at risk.

#### ***Part 4: Powers of inspection, sampling, investigation and sealing***

##### **Inspection of goods**

**707.** (1) A customs officer may inspect –

- (a) any goods on or in any premises, vessel, aircraft, train, railway carriage or vehicle within a customs controlled area;
- (b) any goods which a person within a customs controlled area has with him or her;
- (c) any goods found during a search in terms of this Chapter of –
  - (i) any premises;
  - (ii) any vessel, aircraft, train, railway carriage or vehicle; or
  - (iii) any person;

- (d) any goods on public display for sale;
- (e) any goods produced on request by a customs officer in terms of this Chapter;
- (f) any goods in respect of which a breach of this Act or a tax levying Act has been committed or on reasonable grounds is suspected by a customs officer to have been committed; or
- (g) any other goods that are subject to customs control.

(2) Goods may without notice to any person be inspected at any time –

- (a) after the goods have been imported into the Republic, whether or not the goods have been cleared in terms of section **106**;
- (b) before the goods are exported from the Republic, whether or not the goods have been cleared in terms of section **110**; or
- (c) whilst the goods are under a customs procedure.

(3) Inspection of goods includes, to the extent necessary for the enforcement of this Act or a tax levying Act –

- (a) checking the goods and the packages or containers in which the goods are packed;
- (b) examining the goods and the packages or containers in which the goods are packed, whether –
  - (i) manually; or
  - (ii) by means of scanning equipment or any mechanical, electrical, imaging or electronic appliances that can produce an indication of the nature or characteristics of the goods or the contents of the packages or containers;
- (c) opening of packages or containers in which the goods are packed;<sup>386</sup>
- (d) carrying out tests on and analysing the goods;
- (e) determining the quantity, volume or weight of the goods;
- (f) removing the goods to another place in order to carry out any further inspection;
- (g) subjecting the goods to a chemical, mechanical or technological process;
- (h) obtaining advice, including expert or technical advice on the goods or a matter relating to the goods; and
- (i) using sniffer dogs or other animals trained to use their senses for the detection of specific substances.

(4) In scheduling its inspection tasks, the customs authority must give priority to the inspection of perishable goods, live animals and other goods which because of their nature must be processed expeditiously.

<sup>386</sup> See Part 5 of Chapter 21 for opening of international postal articles.



- (5) When removing any goods in terms of subsection (3)(f) a customs officer must –
- (a) provide a receipt for the goods; and
  - (b) return the goods within a reasonable time unless the goods are detained in terms of Chapter 32.

### **Production of goods for inspection**

**708.** A customs officer may, for the purpose of section 707, call on any person to produce or make available for inspection, either immediately or at a time and place specified by the customs officer, any goods in the possession or custody or under the control of that person.

### **Sampling of goods<sup>387</sup>**

**709.** (1) A customs officer may take, or direct another person to take and produce samples of goods, but only when, and in quantities, necessary for –

- (a) conducting an inspection of the goods in terms of section 707;
- (b) establishing for the purpose of this Act or a tax levying Act, whether as part of an inspection or not –
  - (i) the nature or characteristics of the goods;
  - (ii) the tariff classification, value or origin of the goods;
  - (iii) whether the goods are prohibited, restricted, sectorally controlled or counterfeit goods;
  - (iv) whether the goods are the same goods previously cleared and released for a customs procedure; or
  - (v) any other fact in relation to the goods as may be prescribed by rule; or
- (c) use as evidence in a court or other proceedings referred to in Chapter 38.

(2) Samples taken in terms of subsection (1) may be –

- (a) examined, analysed or tested in any way;
- (b) subjected to a chemical, mechanical or technological process;
- (c) used for obtaining advice, including expert or technical advice, on the goods as reflected by the samples or a matter relating to the goods; or
- (d) utilised in any other way necessary for achieving the purposes of subsection (1).

(3) Samples of goods –

- (a) may be taken in terms of subsection (1) –

<sup>387</sup> See Chapter 22 for sampling of goods by importers, exporters and other persons having an interest in the goods.

- (i) without permission of any person; and
- (ii) without payment to any person; and
- (b) must be dealt with and accounted for in a manner as may be prescribed by rule.

- (4) Samples of goods may be taken at any time –
  - (a) after the goods have been imported into the Republic, whether or not the goods have been cleared in terms of section **106**;
  - (b) before the goods are exported from the Republic, whether or not the goods have been cleared in terms of section **110**;
  - (c) whilst the goods are under a customs procedure; or
  - (d) after the conditional release of goods for home use or a customs procedure.

(5) (a) Goods forming part of a specific consignment or contained in a specific package or container must for the purpose of this Act or a tax levying Act be regarded as being of the same nature and having the same characteristics as those of samples taken from those goods, unless proved otherwise.

(b) Paragraph (a) does not apply if any documents issued in respect of the consignment, package or container indicates that the consignment consists of, or the package or container contains, goods of a dissimilar kind.

### **Carrying out of certain actions in relation to goods and samples by other persons**

**710.** A customs officer may cause the actions referred to in section **707(3)(d)** to (h) or **709(2)** in relation to goods or samples be carried out by a person designated by the customs authority and in accordance with the requirements of the customs authority.

### **Liability for costs incurred by SARS**

**711.** The following persons are jointly and severally liable towards the Commissioner for the payment of any costs<sup>388</sup> incurred by SARS in connection with the carrying out of any of the actions referred to in section **707(3)(d)** to (h) or **709(2)** in relation to goods or samples:

- (a) a person who –
  - (i) is the owner of the goods;
  - (ii) has a material interest in the goods; or
  - (iii) has the right to dispose of the goods;
- (b) the importer of the goods or the person on whose authority the goods were imported into the Republic; or
- (c) the exporter of the goods.

<sup>388</sup> For recovery of these costs see Chapter **31**.

### Inspection of documents

- 712.** (1) A customs officer may inspect –
- (a) any documents –
    - (i) found during a search in terms of this Chapter of any premises, vessel, aircraft, train, railway carriage or vehicle;
    - (ii) found during a search in terms of this Chapter of any person;
    - (iii) produced on request by a customs officer in terms of this Chapter;
    - (iv) that relate to any act or omission which constitutes, or on reasonable grounds is suspected by a customs officer to constitute, a breach of this Act or a tax levying Act; or
    - (v) in respect of which a breach of this Act or a tax levying Act has been committed, or on reasonable grounds is suspected by a customs officer to have been committed;
  - (b) any documents that relate to –
    - (i) any premises within a customs controlled area;
    - (ii) any premises searched in terms of section **694(2)**;
    - (iii) any vessel, aircraft, train, railway carriage or vehicle within a customs controlled area, or its use, cargo, passengers, crew or stores or its journey, voyage, flight or travelling schedules; or
    - (iv) any vessel, aircraft, train, railway carriage or vehicle searched in terms of section **697(2)**, or its use, cargo, passengers, crew or stores or its journey, voyage or flight schedules;
  - (c) any documents that relate to –
    - (i) any goods within a customs controlled area, including any goods in or on any premises, vessel, aircraft, train, railway carriage or vehicle within a customs controlled area;
    - (ii) any goods found during a search in terms of this Chapter of any premises, vessel, aircraft, train, railway carriage or vehicle;
    - (iii) any goods found during a search in terms of this Chapter of any person;
    - (iv) any goods produced on request by a customs officer in terms of this Chapter;
    - (v) any goods in respect of which a breach of this Act or a tax levying Act has been committed, or on reasonable grounds is suspected by a customs officer to have been committed; or
    - (vi) any other goods that are subject to customs control; or
  - (d) any records which that person is required to keep or exhibit in terms of –
    - (i) this Act; or
    - (ii) a tax levying Act in relation to goods to which this Act applies.

(2) Inspection of documents includes, to the extent necessary for the enforcement of this Act or a tax levying Act –

- (a) examining the documents;
- (b) copying, or making extracts from, the documents; and
- (c) removing the documents in order to make copies or extracts or to carry out any further examinations.

(3) When removing any documents in terms of subsection (2)(c) a customs officer must –

- (a) provide a receipt for the documents; and
- (b) return the documents within a reasonable time unless the documents are detained in terms of Chapter 33.

### **Production of documents for inspection**

**713.** (1) A customs officer may, for the purpose of section 712, call on any person –

- (a) to produce or make available for inspection, either immediately or at a time and place specified by the customs officer, any documents referred to in that section that are in the possession or custody or under the control of that person; or
- (b) to furnish the customs officer with a copy of any such document.

(2) A customs officer may call on any person to produce, either immediately or at a time and place specified by the customs officer, any documents which that person is required in terms of this Act or a tax levying Act to submit and has failed to submit.

### **Investigative powers**

**714.** (1) A customs officer may, for the purpose of this Act or a tax levying Act –

- (a) question a person concerning any premises, vessel, aircraft, train, railway carriage or vehicle inspected or searched in terms of this Chapter, or concerning any goods, documents or persons in or on such premises, vessel, aircraft, train, railway carriage or vehicle, who –
  - (i) is the owner or otherwise in charge of the premises, the vessel, aircraft, train, railway carriage or vehicle;
  - (ii) is or was the on-board operator or a crew member of the vessel, aircraft, train, railway carriage or vehicle during the inspection or search;
  - (iii) is or was present on or in the premises, vessel, aircraft, train, railway carriage or vehicle during the inspection or search;
  - (iv) works on or in the premises, vessel, aircraft, train, railway carriage or vehicle;

- (v) performs any duties in connection with the premises, vessel, aircraft, train, railway carriage or vehicle;
  - (vi) resides on the premises; or
  - (vii) is the owner or otherwise in possession, custody or control of, or has any interest in, or performs any duties in connection with, any goods or documents on or in the premises, vessel, aircraft, train, railway carriage or vehicle;
- (b) question a person concerning any goods or documents inspected or found during a search in terms of this Chapter –
- (i) who is the owner or otherwise in possession, custody or control of, or has any interest in, or performs any duties in connection with, the goods or documents; or
  - (ii) who produced the goods or documents on request by a customs officer;
- (c) question a person stopped or called on or searched in terms of this Chapter concerning any goods or documents which that person has or had with him or her;
- (d) question a person concerning any act or omission which constitutes, or on reasonable grounds is suspected by a customs officer to constitute, a breach of this Act or a tax levying Act; and
- (e) take photographs or make audio or audio-visual recordings of anything or any person that –
- (i) may be relevant for the purpose of any inspection or investigation in terms of this Act; or
  - (ii) may afford evidence for the purpose of any criminal or civil proceedings in terms of this Act or a tax levying Act.

(2) A person may be questioned in terms of this section either alone or in the presence of any other person.

### **Failure or refusal to produce goods or documents or to answer questions**

**715.** (1) If a person is required in terms of section **708** or **713** to produce any goods or documents or in terms of section **714** to answer any questions, and fails or refuses to comply with the requirement, a customs officer may issue a written notice to that person directing that person to appear before that or any other customs officer at a time and place specified in the notice –

- (a) to produce any goods or documents specified in the notice; or
- (b) to answer questions concerning a matter specified in the notice.

(2) A written notice issued in terms of subsection (1) –

- (a) must be in a format prescribed by rule; and

(b) may require the person to answer questions under oath or affirmation.

(3) (a) A person to whom a written notice is issued in terms of subsection (1), must truthfully and to the best of that person's ability answer all questions put to that person in consequence of the notice despite the fact that the answer might be self incriminating.

(b) An answer given by a person that incriminates him or her may not be used against that person in any subsequent criminal proceedings against that person.

(4) A person may be questioned in terms of this section either alone or in the presence of any other person.

### **Unsealed containers, vehicle holding compartments, road tankers and packages**

**715A.** (1) If a container, the holding compartment of a vehicle capable of being closed, a road tanker or any package as may be specified by rule, which contains goods not in free circulation, is not sealed as required by section **132A**, a customs officer may –

- (a) direct a person responsible for such sealing to affix any such seal or fastening to the container, holding compartment, road tanker or package; or
- (b) at the risk and expense of that person affix the seal or fastening on payment of costs as may be prescribed by rule.

(2) A customs officer may at any time affix a seal or fastening or any additional seal or fastening to, or replace any seal or fastening on, any container, holding compartment, road tanker or package which contains goods not in free circulation.

### **Customs supervision of acts done in relation to goods**

**715B.** The customs authority may require any act that is to be done in relation to goods not in free circulation must be done under customs supervision.

## ***Part 5: Powers of arrest***

### **Powers of arrest of customs officers**

**716.** The Commissioner –

- (a) may determine the category of customs officers who have the power to carry out an arrest for the purpose of enforcing this Act or a tax levying Act; and
- (b) must furnish each such customs officer with an appropriate certificate and identification card stating that the officer is authorised to carry out an arrest for the purpose of enforcing this Act or a tax levying Act.

### **Manner and effect of an arrest**

**717.** (1) An arrest may be effected with or without a warrant and, unless the person being arrested submits to custody, by actually touching the body of that person or, if the circumstances so require, by forcibly confining that person's body.

(2) A customs officer effecting an arrest must, at the time of effecting the arrest or immediately after effecting the arrest –

- (a) inform the arrested person of the cause of the arrest; or
- (b) in the case of an arrest effected by virtue of a warrant, hand that person a copy of the warrant if the person arrested so demands.

(3) The effect of an arrest is that the person arrested is in lawful custody and that that person will be detained in custody until lawfully discharged or released from custody.

### **Arrest of persons without warrant**

**718.** A customs officer having arresting powers may, without a warrant, arrest –

- (a) the on-board operator of a vessel, aircraft, train, railway carriage, or vehicle who refuses –
  - (i) to comply with a lawful command of a customs officer to bring such vessel, aircraft, train or vehicle to a stop; or
  - (ii) to allow a customs officer to board the vessel, aircraft, train, railway carriage, or vehicle for the purpose of enforcing this Act or a tax levying Act;
- (b) a person who in contravention of this Act –
  - (i) entered or is suspected of having entered the Republic other than through a place of entry; or
  - (ii) is attempting or suspected of attempting to leave the Republic other than through a place of exit;
- (c) a person who –
  - (i) imports, or on reasonable grounds is suspected of having imported, goods into the Republic without complying with this Act; or
  - (ii) is in the process of exporting, or on reasonable grounds is suspected of being in the process of exporting, goods from the Republic without complying with this Act;
- (d) a person who –
  - (i) imports, or on reasonable grounds is suspected of having imported, prohibited, restricted, sectorally controlled or counterfeit goods into the Republic in contravention of any legislation applicable to such prohibited, restricted, sectorally controlled or counterfeit goods;

- (ii) is in the process of exporting, or on reasonable grounds is suspected of being in the process of exporting, prohibited, restricted, sectorally controlled or counterfeit goods from the Republic in contravention of any legislation applicable to such prohibited, restricted, sectorally controlled or counterfeit goods; or
  - (iii) is found in possession of, or on reasonable grounds is suspected of being in possession of, any prohibited, restricted, sectorally controlled or counterfeit goods in contravention of any legislation applicable to such prohibited, restricted, sectorally controlled or counterfeit goods;
- (e) a person who –
- (i) diverts, or on reasonable grounds is suspected of having diverted, imported goods for home use;
  - (ii) in any way smuggles or on reasonable grounds is suspected of smuggling, goods into or out of the Republic; or
  - (iii) is found in possession of, or on reasonable grounds is suspected of being in possession of, any goods diverted for home use or smuggled into or that are being smuggled out of the Republic;
- (f) a person who has been arrested by a customs officer and who has escaped from lawful custody, if found within five calendar days of such an escape;
- (g) person found impersonating a customs officer; or
- (h) person who wilfully obstructs an officer in the execution of his or her duty.

#### **Arrest of persons under authority of warrant**

**719.** (1) The customs authority may apply to any magistrate for a warrant authorising the arrest of a specific person.

(2) A magistrate may issue a warrant in terms of subsection (1) only on written application by the customs authority setting out under oath or affirmation –

- (a) the offence that has allegedly been committed by the person concerned;
- (b) the grounds on which the person in respect of whom the warrant is being applied for is reasonably suspected of having committed the alleged offence; and
- (c) that the offence was allegedly committed within the area of jurisdiction of that magistrate.

(3) A warrant of arrest issued by a magistrate as contemplated in subsection (2) may be executed by any customs officer and the customs officer executing such warrant must do so in accordance with the terms thereof.



### **Non-liability for wrongful arrest**

**720.** (1) A customs officer arresting a person under a warrant of arrest and who, in the reasonable belief that he or she is arresting that person, arrests another person, is not liable for wrongful arrest.

(2) Any police officer, other customs officer or other person assisting a customs officer making an arrest, or who is required to detain a person so arrested, and who reasonably believes that the said person is the person whose arrest has been authorized by the warrant of arrest, is likewise not liable for such assistance or detention.

### **Breaking open premises for purpose of arrest**

**721.** Any customs officer who may lawfully arrest a person in terms of this Part and who knows, or reasonably suspects, such person to be on any premises, may, if he or she first audibly demands entry into such premises and notifies the purpose for which he or she seeks entry and fails to gain entry, break open, enter and search such premises for the purpose of effecting the arrest.

### **Use of force in effecting arrest**

**722.** (1) For the purposes of this section—

- (a) “**arrestor**” means a customs officer authorised to carry out the arrest of a suspect; and
- (b) “**suspect**” means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.

(2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds—

- (a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;
- (b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or

- (c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

### **Detention of arrested person**

**723.** Any person arrested by a customs officer must as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place expressly mentioned in the warrant, and further dealt with in the manner contemplated in section 50 of the Criminal Procedure Act (Act No. 51 of 1977).

## ***Part 6: Carrying and use of arms and ammunitions***

### **Authority to carry an official firearm**

**724.** (1) The Commissioner may determine a category of customs officers permitted to carry firearms for the purpose of exercising their enforcement functions.

(2) The Commissioner may issue an official SARS firearm to a customs officer permitted to carry a firearm only after the officer has been trained in the use of firearms of the kind to be issued to the officer and a certificate of competency has been issued to the officer, as may be prescribed by rule.

(3) (a) The identity card of a customs officer to whom an official SARS firearm has been issued must indicate that that customs officer is permitted to carry such a firearm.

(b) Such indication on a customs officer's identity card is proof that the officer is permitted to carry an official SARS firearm.

### **Use of official firearms by customs officers**

**725.** (1) A customs officer may use an official firearm only as a last resort and then only –

- (a) in self defence from imminent or future death or grievous bodily harm; or
- (b) in defence of any other person accompanying or assisting the officer in the execution of his or her duties that are at risk from imminent or future death or grievous bodily harm.

(2) Before firing an official firearm a customs officer must, if circumstances permit –

- (a) issue a verbal warning;
- (b) if the warning has no effect, fire a warning shot; and

(c) if the warnings have no effect, direct the line of fire in such a manner that the probable result will not be a fatal injury.

(3) Whenever a customs officer fires an official firearm, that officer must immediately report that fact in writing to the appropriate supervising customs officer in a manner as may be prescribed by rule.

### **Use of non-lethal weapons**

**726.** (1) The Commissioner may authorise the use of non-lethal weapons by customs officers in such circumstances and in such a manner as may be prescribed by rule.

(2) The Commissioner may by rule prescribe the training requirements applicable to the use of such weapons, the control over such weapons, including reporting procedures and any other matter that the Commissioner may consider reasonably necessary and useful for administering the use of any non-lethal weapons.

## ***Part 7: Border control***

### **Customs assistance in border control**

**727.** (1) The customs authority may for the purpose of enforcing this Act and the tax levying Acts assist in –

- (a) patrolling the borders of the Republic; and
- (b) preventing, combating and investigating cross-border crime relating to imported goods and goods in the process of being exported.

(2) Customs officers may exercise any of their enforcement functions for the purpose of subsection (1).

### **Acquisition of equipment for border control**

**728.** The Commissioner may acquire any equipment necessary for patrolling the land and sea borders of the Republic, including –

- (a) any patrol boats, aircraft and vehicles; and
- (b) any arms and ammunition required to equip or supply any customs patrol boat, aircraft or vehicle.

### **Customs patrol boats**

**729.** (1) The customs officer commanding any customs patrol boat having hoisted and carrying or displaying the customs ensign or flag may chase any vessel where –

- (a) that vessel do not immediately come to a stop when signalled, ordered or required to do so; or
- (b) the on-board operator of the vessel refuses to permit the vessel to be boarded.

(2) The customs officer commanding any customs patrol boat involved in the pursuit of a vessel as contemplated in subsection (1) may, after having obtained authorisation from the Commissioner, as a last resort and after having fired a warning, fire at or onto the fleeing vessel to compel it to come to a stop.

### **Right of hot pursuit by sea**

**730.** (1) Customs officers on board a customs patrol boat may exercise on behalf of the Republic, or on behalf of a foreign state, the right of hot pursuit of any vessel in accordance with article 111 of the United Nations Convention of the Law Of the Sea (UNCLOS).

(2) The seizure of such a vessel and the arrest of any person on board such a vessel may be effected by any customs officer on board a customs patrol vessel.

### **Exemptions applicable to customs patrol boats, aircraft and vehicles and customs officers**

**731.** Despite anything to the contrary contained in any other legislation –

- (a) customs patrol boats, aircraft and vehicles are exempted from –
  - (i) any registration, licensing or other requirement or any related fee normally applicable to the possession or movement of vessels, aircraft or vehicles, if clearly marked and identifiable as a customs patrol boat, aircraft or vehicle; or
  - (ii) any mooring, docking, landing or road toll fee, or any similar charge, whilst used for official duties; and
- (b) customs officers serving on board customs patrol boats are exempted from any provisions relating to their competency or certification if adequately trained and tested in accordance with the standards prescribed by rule in order to ensure their competency and certification.

## ***Part 8: Other matters***

### **Rules to facilitate implementation of this Chapter**

**732.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) concerning the acquisition, record-keeping, carrying, possession, use, safe-keeping, transport, theft, loss and disposal of firearms and ammunition;

- (b) concerning the manner of reporting the firing of an official firearm and the procedures to be followed in respect thereof;
- (c) concerning the type of non-lethal weapons that may be used by customs officers, the manner of their use and the safety and control measures that must be complied with in respect of such weapons;
- (d) concerning the acquisition, storage and use of arms and ammunition for use on customs patrol boats;
- (e) prescribing the manner in which customs arms, ammunition and related equipment must be marked and identified; and
- (f) regarding the training and certification requirements for customs officers for the safe use of firearms and ammunition.

### **Offences in terms of this Chapter**

**733.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section **694(3)**, **696(1)**, **699(1)** or **700(2)(a)**.

(2) A person in charge of a premises or the on-board operator of a vessel, aircraft, train, railway carriage or vehicle is guilty of an offence if that person or on-board operator contravenes or fails to comply with section **700(2)(b)**.

(3) A contravention of or failure to comply with section **696(1)**, **699(1)** or **700(2)(a)** is a Category 1 offence.

## **CHAPTER 33**

### **DETENTION, SEIZURE AND CONFISCATION OF GOODS**

#### **Purpose and application of this Chapter**

**734.** (1) The purpose of this Chapter is to provide for the detention, seizure and confiscation of goods to which this Chapter applies in order to enforce the provisions of this Act or a tax levying Act.

(2) This Chapter applies, subject to sections **736** and **737**, to all goods, including documents, that in whatever way have become subject to customs control.

#### ***Part 1: Detention of goods***

#### **Power to detain goods**

**735.** (1) A customs officer may detain any goods to which this Chapter applies –  
(a) for the purpose of investigating or determining whether –

- (i) a breach of this Act or a tax levying Act has been committed in relation to the goods;
  - (ii) goods claimed to be excluded or exempted from a requirement of this Act, are in fact goods excluded or exempted from such requirement;<sup>389</sup>
  - (iii) the goods are prohibited, restricted or sectorally controlled goods; or
  - (iv) the goods have been or are being used in committing an offence;
- (b) if the detention of the goods is permitted in terms of another provision of this Act; or
- (c) in any other circumstances as may be prescribed by rule.

(2) If such goods consist of documents, a customs officer may detain the documents –

- (a) for the purpose of investigating or determining whether –
- (i) a breach of this Act or a tax levying Act has been or is being committed in relation to any goods or matter to which the document relates;
  - (ii) the document affords evidence of the commission of such a breach;
  - (iii) any goods to which the document relates are prohibited, restricted or sectorally controlled goods; or
  - (iv) any goods to which the document relates have been or are being used in the commission of an offence;
- (b) if the detention of the document is permitted in terms of another provision of this Act; or
- (c) in any other circumstances as may be prescribed by rule.

(3) A customs officer may detain goods in terms of subsection (1) or (2) wherever found in the course of exercising their enforcement functions.

### **Detention of prohibited, restricted and sectorally controlled goods**

**736.** If goods are detained in terms of section **735**(1) and it is established after the detention that the goods are prohibited, restricted or sectorally controlled goods that must be detained in terms of Chapter **34** –

- (a) the goods must be regarded to be detained in terms of that Chapter; and
- (b) that Chapter becomes applicable to the goods.

### **Detention of counterfeit goods**

**737.** (1) Section **735** does not apply to the detention of goods solely by reason of the fact that the goods are counterfeit goods or goods suspected to be counterfeit goods.<sup>390</sup>

<sup>389</sup> For instance goods excluded in terms of section **106**(1) or **110**(1) from clearance requirements.

<sup>390</sup> The detention of counterfeit goods on that ground is dealt with in Chapter **35**.

(2) Subsection (1) may not be read as preventing counterfeit goods, or goods suspected of being counterfeit goods, from being detained in terms of section **735** if the reason for the detention is not based on the fact that the goods are counterfeit goods or goods suspected of being counterfeit goods.<sup>391</sup>

(3) If counterfeit goods, or goods suspected of being counterfeit goods, are detained in terms of section **735**, the provisions of this Chapter and the other provisions applicable to goods detained in terms of that section apply to the goods unless the customs authority directs that Chapter **35** be applied to the goods as if the goods were detained in terms of that Chapter.

### **Notice of detention**

**738.** (1) When detaining goods in terms of section **735**(1) or (2), a customs officer must issue a notice of detention to –

- (a) the person clearing the goods or who submitted the clearance declaration, if the goods are goods being cleared; or
- (b) the person in whose possession the goods are, or are believed to be, at the time of detention.

(2) If the goods are at any licensed premises, the customs authority must electronically in accordance with section **879** notify the licensee of the premises of the detention.

(3) A notice of detention must –

- (a) identify the goods to which it relates;
- (b) state the date from which the goods are detained;
- (c) state the reason for the detention; and
- (d) contain any other particulars as may be prescribed by rule.

### **Presence of persons when detained goods are inspected**

**739.** (1) When inspecting goods that have been detained or opening any package or container containing detained goods, a customs officer –

- (a) must, on request by a person clearing the goods or who submitted a clearance declaration in respect of the goods, or that person's representative, allow that person

<sup>391</sup> This provision allows counterfeit goods to be detained on any of the grounds set out in section **735**(1) as long as the detention is not based on the fact that the goods are counterfeit goods, for instance when counterfeit goods are diverted for home use in contravention of the Customs Control Act to evade tax.

or representative to be present during the inspection or opening of the package or container; or

- (b) may require the person clearing the goods or who submitted the clearance declaration, or that person's representative, to be present during the inspection or opening of the package or container.

(2) Subsection (1) does not prevent a customs officer from inspecting goods or opening a package or container in the absence of a person referred to in that subsection if –

- (a) that person fails to arrive at the appointed time for the customs officer's actions; or
- (b) disclosure of the inspection or opening of the package or container may obstruct the investigation of an offence involving the diversion or smuggling of goods or the evasion of tax.

### **Place of detention**

**740.** (1) Goods detained in terms of section **735**(1) or (2) may, pending or for purposes of the action to be taken in respect of the goods –

- (a) be kept at the place where they were detained or be removed to any licensed premises as the customs authority may determine; or
- (b) if the conditions for the removal of the goods in terms of section **559** to a state warehouse exist, be removed to a state warehouse in terms of that section or dealt with in terms of section **569**.

(2) No person may remove detained goods from the place where they are kept or stored without the permission of the customs authority.

(3) If a place where detained goods are kept or stored is not a customs controlled area, that place must for purposes of those goods be regarded to be a customs controlled area.

(4) Detained goods must be handled, stored and kept in such a way that they are reasonably secured against damage or loss.

### **Period of detention**

**741.** Goods may in terms of section **735**(1) or (2) be detained for a reasonable time pending –

- (a) completion of any steps necessary to enable the customs authority to arrive at a decision concerning the action to be taken in respect of the detained goods; and



- (b) a decision on such action, including a decision on whether the goods should be seized in terms of Part 2.

### **Termination of detentions**

**742.** (1) The customs authority must immediately terminate the detention of any goods if –

- (a) the ground for the detention of the goods is no longer relevant;
- (b) the need for the further detention of the goods have fallen away, including where security is given in the case of goods detained by reason of a risk to collect tax or other debt that may be payable or become payable on the goods;
- (c) the customs authority decides not to seize the goods;
- (d) no action is taken within a reasonable time after the goods were detained;
- (e) the goods were detained in error; or
- (f) a court so orders.

(2) The customs authority must promptly notify the person to whom the notice of detention was issued if the detention of the goods is terminated in terms of subsection (1).

(3) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section 879 also notify the licensee of the premises of the termination of the detention.

## ***Part 2: Seizure of goods***

### **Power to seize goods**

**743.** (1) The customs authority may seize any goods to which this Chapter applies, including goods detained in terms of section 735(1) or (2) –

- (a) if the goods are liable to confiscation in terms of section 747(1);
- (b) if the goods are or may be needed as evidence in any criminal proceedings;
- (c) if the seizure of the goods is permitted in terms of another provision of this Act; or
- (d) in any other circumstances as may be prescribed by rule.

(2) Goods seized in terms of subsection (1)(b) must –

- (a) be handed over to the South African Police Service or kept or stored for the purposes of the South African Police Service; and
- (b) be dealt with in accordance with the legislation regulating the criminal justice system, provided that imported goods may not be allowed into home use unless those goods are cleared and released for home use under Chapter 8 for home.<sup>392</sup>

<sup>392</sup> See sections 30 to 34 of the Criminal Procedure Act, 1977.

(3) Goods seized in terms of subsection (1)(a), (c) or (d) must be dealt with in accordance with section **559** or **569**, if not already dealt with in accordance with any of those sections.

(4) Goods seized in terms of this section must be handled, stored and kept in such a way that they are reasonably secured against damage or loss.

(5) Section **850** applies if goods that are liable to confiscation are to be seized and the goods cannot readily be found.

### **Notice of seizure**

**744.** (1) When seizing goods in terms of section **743**, a customs officer must issue a notice of seizure –

- (a) in the case of goods that were detained in terms of section **735**(1) or (2), to the person to whom the notice of detention was issued;
- (b) in the case of goods that have been seized without previous detention, to the person –
  - (i) clearing the goods or who submitted the clearance declaration, if the goods are goods being cleared; or
  - (ii) in whose possession the goods are, or are believed to be, at the time of seizure.

(2) If the goods are at any licensed premises, the customs authority must electronically in accordance with section **879** notify the licensee of the premises of the seizure.

- (3) A notice of seizure must –
- (a) identify the goods to which it relates;
  - (b) state the date from which the goods are seized;
  - (c) state the reason for the seizure; and
  - (d) contain any other particulars as may be prescribed by rule.

### **Termination of seizures**

**745.** (1) The customs authority must immediately terminate the seizure of any goods if –

- (a) an application made in terms of section **746** for the termination of the seizure is granted;

- (b) the goods were seized in error; or
- (c) a court so orders.

(2) The customs authority must promptly notify the person to whom the notice of seizure was issued if the seizure of the goods is terminated in terms of subsection (1).

(3) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section **879** also notify the licensee of the premises of the termination of the seizure.

(4) The termination of a seizure does not reactivate any initial detention of the goods.

### **Termination of seizures on application by owner of goods**

**746.** (1) A person who is the owner of any goods seized in terms of section **743**, may apply to the customs authority for termination of the seizure.

(2) (a) The burden to prove that the applicant is the owner of any seized goods rests with the applicant.

(b) In the event of disputing claims as to ownership of any goods, the customs authority may not decide the dispute, but must abide by the decision of a court.

(3) An application in terms of subsection (1) must –

- (a) motivate the reasons why the seizure should be terminated; and
- (b) contain the information and comply with such other requirements as may be prescribed by rule.

(4) The customs authority may –

- (a) on good cause shown grant the application subject to any conditions the customs authority may impose;<sup>393</sup> or
- (b) refuse the application.

(5) An application must be refused if granting the application would be inconsistent with this Act, a tax levying Act or any other legislation applicable to the goods.

(6) If an application is granted the applicant must pay to the Commissioner –

<sup>393</sup> In terms of section **849** these conditions may include the imposition of an administrative penalty equal to the customs value of the goods.

- (a) any outstanding tax, interest on tax and administrative penalty that may be payable on or in respect of the goods; and
- (b) any expenses incurred by the Commissioner in connection with the seizure, and any initial detention, of the goods.

(7) The customs authority must promptly notify the applicant if the application is granted and the seizure of the goods is terminated.

(8) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section **879** also notify the licensee of the premises of the termination of the seizure.

(9) The termination of a seizure does not reactivate any initial detention of the goods.

### ***Part 3: Confiscation of goods***

#### **Confiscation of goods**

**747.** (1) The following goods are for purposes of section **743(1)(a)** liable to confiscation:

- (a) any goods in respect of which a breach of this Act or a tax levying Act has been committed;
- (b) any goods that have been used in committing an offence;
- (c) any goods, including a vessel, aircraft, railway carriage or vehicle or other means of transport, that have been specifically constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;
- (d) any goods that must be destroyed or otherwise disposed of to give effect to a requirement in terms of this Act or any other legislation;
- (e) any document in respect of which a breach of this Act or a tax levying Act has been committed or which relates to a matter in respect of which a breach of this Act or a tax levying Act has been committed; or
- (f) any goods that may be confiscated in terms of any other provision of this Act.

(2) The customs authority must by written notice to the person to whom the notice of seizure was issued in terms of section **744** confiscate<sup>394</sup> any goods referred to in subsection (1) –

- (a) if upon expiry of 30 calendar days from the date the goods were seized –

<sup>394</sup> Seizure of goods in accordance with Part 2 of this Chapter must precede confiscation.

- (i) no application for termination of the seizure has been submitted to the customs authority in terms of section **746**; or
- (ii) no court application for termination of the seizure has been lodged; or
- (b) if any such application has been submitted or lodged but has been refused.

(3) Goods confiscated in terms of subsection (2) become the property of the state for credit of the National Revenue Fund.

### **Withdrawal of confiscations**

**748.** (1) The customs authority must immediately withdraw the confiscation of any goods if –

- (a) an application in terms of section **749** for withdrawal of the confiscation is granted;
- (b) the goods were confiscated in error; or
- (c) a court so orders.

(2) The customs authority must promptly notify the person to whom notice of the confiscation was issued if the confiscation of the goods is withdrawn in terms of subsection (1).

(3) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section **879** also notify the licensee of the premises of the withdrawal of the confiscation.

(4) The withdrawal of a confiscation does not reactivate any initial detention or the seizure of the goods.

### **Withdrawal of confiscations on application by previous owners**

**749.** (1) A person who before the goods were confiscated in terms of section **747** was the owner of the goods, may apply to the customs authority for the withdrawal of the confiscation.

(2) (a) The burden to prove that the applicant was the owner of the goods before the goods were confiscated rests with the applicant.

(b) In the event of disputing claims as to ownership of any goods, the customs authority may not decide the dispute, but must abide by the decision of a court.

- (3) An application in terms of subsection (1) must –
- (a) motivate the reasons why the confiscation should be withdrawn; and

(b) be in a format and comply with such other requirements as may be prescribed rule.

(4) The customs authority may –

- (a) on good cause shown grant an application subject to any conditions the customs authority may impose;<sup>395</sup> or
- (b) refuse the application.

(5) An application must be refused if granting the application would be inconsistent with any other legislation applicable to the goods.

(6) If an application is granted the applicant must pay to the Commissioner –

- (a) any outstanding tax, interest on tax and administrative penalty payable on or in respect of the goods;<sup>396</sup> and
- (b) any expenses incurred by the Commissioner in connection with the confiscation, including the seizure and any initial detention, of the goods.

(7) The customs authority must promptly notify the applicant if the application is granted and the confiscation of the goods is withdrawn.

(8) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section **879** also notify the licensee of the premises of the withdrawal of the confiscation.

(9) The withdrawal of a confiscation does not reactivate any initial detention or seizure of the goods.

### **Disposal of confiscated goods**

**750.** (1) Goods confiscated in terms of section **747** must be sold or otherwise disposed of in accordance with sections **581** to **588**, subject to subsection (2).

(2) Confiscated goods that are or may be needed as evidence in any criminal proceedings must be –

- (a) be handed over to the South African Police Service or kept or stored for the purposes of the South African Police Service; and
- (b) be dealt with in accordance with the legislation regulating the criminal justice system.<sup>397</sup>

<sup>395</sup> In terms of section **849** these conditions may include the imposition of an administrative penalty equal to the customs value of the goods.

<sup>396</sup> See sections **127** and **130** for tax and penalties that may be payable.

#### ***Part 4: General***

##### **Rules to facilitate implementation of this Chapter**

**751.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) processes, timeframes and other requirements for applications to terminate the seizure or confiscation of any goods;
- (b)

##### **Offences in terms of this Chapter**

**752.** A person is guilty of an offence if that person ...

### **CHAPTER 34**

#### **PROHIBITED, RESTRICTED AND SECTORALLY CONTROLLED GOODS**

##### **Definition**

**753.** In this Chapter –

“**administering authority**”, in relation to –

- (a) prohibited goods, means the organ of state administering legislation referred to in section **755(a)**, (b) or (c);
- (b) restricted goods, means the organ of state administering legislation referred to in section **764(a)**, (b) or (c); and
- (c) sectorally controlled goods, means the organ of state administering legislation referred to in section **773(a)** or (b).

##### **Purpose and application of this Chapter**

**754.** (1) The purpose of this Chapter is to provide for customs participation in the implementation of legislation –

- (a) prohibiting or restricting the import into, possession in or export from the Republic of certain goods; and
- (b) regulating compliance of certain goods imported into or to be exported from the Republic with health, agricultural, environmental, safety or other sectoral standards or requirements applicable in terms of such legislation<sup>398</sup>.

(2) This Chapter applies to all prohibited, restricted and sectorally controlled goods that in whatever way have become subject to customs control in terms of this Act.

<sup>397</sup> See sections 30 to 34 of the Criminal Procedure Act, 1977.

<sup>398</sup> It should be noted that in terms of this Chapter customs are assigned direct powers to detain and deal with goods that are prohibited, restricted or sectorally controlled goods in terms of other legislation.

### ***Part 1: Prohibited goods***

#### **Prohibited goods**

**755.** The following goods are prohibited goods for the purposes of this Act:<sup>399</sup>

- (a) any goods imported into the Republic in contravention of legislation, other than the Counterfeit Goods Act,<sup>400</sup> prohibiting the importation of those goods;
- (b) any goods in the possession of a person in contravention of legislation, other than the Counterfeit Goods Act, prohibiting the possession of those goods; or
- (c) any goods in the process of being exported from the Republic in contravention of legislation, other than the Counterfeit Goods Act, prohibiting the exportation of those goods.

#### **Clearance of prohibited goods**

**756.** (1) No person may clear prohibited goods for home use or a customs procedure.

(2) Imported prohibited goods destined for a destination other than the Republic may, despite subsection (1) but subject to subsection (3), be cleared for transshipment or international transit, provided that the clearance of the goods for the transshipment or international transit procedure, the release of the goods for that procedure and the handling or transport of the goods in terms of that procedure, is not inconsistent with the legislation referred to in section **755(a)** or (b) read with sections **199** and **229**.

(3) Subsection (2) does not apply to goods of which the import or possession is prohibited by legislation referred to in section **755(a)** or (b) for purposes of –

- (a) combating the illicit trade in narcotics, arms and ammunition, endangered species or any other goods prescribed by rule;
- (b) combating the spreading of contagious human, animal or plant diseases;
- (c) protecting the public against hazardous substances;
- (d) protecting public health or safety; or
- (e) giving effect to any international obligation binding on the Republic.

#### **Detention of prohibited goods**

**757.** (1) The customs authority must, subject to section **758**, detain prohibited goods<sup>401</sup> wherever found in the course of exercising its enforcement functions<sup>402</sup>.

<sup>399</sup> To facilitate the implementation of this Act in relation to prohibited goods, SARS has on its website a list of prohibited goods to which Chapter **34** applies.

<sup>400</sup> Counterfeit goods in the customs environment must be dealt with in accordance with Chapter **35**.

<sup>401</sup> If a customs officer has a suspicion that any specific goods are prohibited goods but is unsure, the customs officer may detain the goods in terms of section **735(1)(a)(ii)** to determine whether the goods are prohibited goods. If it is determined that the goods are prohibited goods, this Chapter becomes applicable by virtue of



(2) The customs authority must, subject to section **758**, detain goods as prohibited goods –

- (a) if an administering authority electronically or in writing –
  - (i) notifies the customs authority that those goods are prohibited goods in terms of legislation administered by that authority; and
  - (ii) requests the customs authority to detain the goods; or
- (b) if a member of the South African Police Service, electronically or in writing, requests the customs authority to detain the goods for a contravention of legislation referred to in section **755(a)**, (b) or (c).

### **Certain prohibited goods excluded from detention**

**758.** (1) The following goods are, subject to subsection (2), excluded from detention in terms of section **757**:

- (a) imported prohibited goods that are cleared in terms of section **756(2)** for transshipment or international transport, provided that the goods are –
  - (i) dealt with strictly in accordance with the provisions of this Act relating to that procedure; and
  - (ii) exported from the Republic within the period applicable to those goods in terms of that procedure;
- (b) prohibited goods that were on board a foreign-going vessel or aircraft when the vessel or aircraft entered the Republic, provided that –
  - (i) the goods are destined for a destination other than the Republic and remain on board that vessel or aircraft until the vessel or aircraft leaves the Republic; and
  - (ii) the vessel or aircraft does not call, dock or land at any place in the Republic; or
- (c) prohibited goods that were on board a foreign-going vessel or aircraft when the vessel or aircraft entered the Republic as stores for that vessel or aircraft, provided that the goods –
  - (i) are reported in terms of section **331**;
  - (ii) are not off-loaded in the Republic; and
  - (iii) are used, or exported from the Republic, on board that vessel or aircraft as stores for that vessel or aircraft.

section **736**.

<sup>402</sup> Implementation of section **757(1)** is not subject to a request in terms of subsection (2). The only condition is that the goods are found whilst subject to customs control. See section **754(2)**.

(2) Subsection (1) does not exclude from detention goods of which the import or possession is prohibited in terms of legislation referred to in section **755**(a) or (b) for purposes of –

- (a) combating the illicit trade in narcotics, arms and ammunition, endangered species or any other goods prescribed by rule;
- (b) combating the spreading of contagious human, animal or plant diseases;
- (c) protecting the public against hazardous substances;
- (d) public health or safety; or
- (e) giving effect to any international obligation binding on the Republic.

### **Notice of detention**

**759.** (1) When detaining goods in terms of section **757**(1) or (2), the customs authority must –

- (a) issue a notice to that effect to the person in whose possession the goods are, or are believed to be, at the time of detention; and
- (b) by electronic message or facsimile transmission notify the following persons of the detention of the goods and the date from which the goods were detained:
  - (i) the administering authority administering the legislation in terms of which the goods are prohibited goods; and
  - (ii) the member of the South African Police Service who requested the detention, if the goods were detained following a request in terms of section **757**(2)(b).

(2) If the goods are at any licensed premises, the customs authority must electronically in accordance with section **879** also notify the licensee of the premises of the detention.

(3) A notice of detention must –

- (a) identify the goods to which it relates;
- (b) state the date of detention of the goods;
- (c) state the reason for the detention; and
- (d) contain any other particulars as may be prescribed by rule.

(4) Subsection (1)(a) does not apply in the case of goods that have first been detained in terms of section **735**(1)(a)(ii) and in respect of which a detention notice has been issued in terms of section **738**.

### **Place where detained goods may be kept**

**760.** (1) Goods detained in terms of section **757(1)** or (2) may, pending the action to be taken in respect of the goods, be –

- (a) kept at the place where they were detained; or
- (b) removed to and stored –
  - (i) in a state warehouse in terms of section **559** or at another place determined in terms of section **569(1)**; or
  - (ii) at any other place of security most suitable in the circumstances as the customs authority may determine.

(2) No person may without the permission of the customs authority remove goods detained in terms of section **757(1)** or (2) from the place where they are kept or stored.

(3) If a place where goods are kept or to which they were removed is not a customs controlled area, that place must purposes of those goods be regarded to be a customs controlled area.

#### **Termination of detentions**

**761.** (1) The customs authority must immediately terminate the detention of goods if –

- (a) the goods were detained in error;
- (b) the administering authority administering the legislation in terms of which the goods are prohibited goods, electronically or in writing, requests the customs authority to terminate the detention of the goods;
- (b) the member of the South African Police Service who requested the detention of the goods in terms of section **757(2)(b)**, electronically or in writing, requests the customs authority to terminate the detention; or
- (c) a court so orders.

(2) The customs authority may, subject to subsection (3) –

- (a) on application by the importer of prohibited goods referred to in section **755(a)**, or if the importer is not located in the Republic, the importer's registered agent, terminate the detention of the goods and allow the importer or the importer's registered agent to clear the goods for outright export and immediately export those goods from the Republic at own expense under supervision of the customs authority, provided that –
  - (i) the importer or the importer's registered agent did not conceal or attempt to conceal the goods, or did not divert or attempt to divert the goods for home use; and
  - (ii) the possession of those goods in the Republic by the importer or the importer's registered agent is not illegal; or

(b) on application by the person who intended to export prohibited goods referred to in section **755(c)** that were in free circulation before their detention, terminate the detention of the goods and allow those goods to revert to free circulation, provided that –

- (i) that person did not conceal or attempt to conceal the goods for purposes of export; and
- (ii) the possession of those goods in the Republic by that person is not illegal.

(3) The customs authority may grant an application in terms of subsection (2) only if the applicant submits written proof to the customs authority that the administering authority has no objection to the application.

### **Disposal of detained prohibited goods**

**762.** (1) Goods detained in terms of section **757(1)** or (2) must be dealt with in accordance with –

- (a) the legislation in terms of which the goods are prohibited goods;
- (b) the legislation regulating the criminal justice system if and to the extent that the goods are needed as evidence in any criminal proceedings; or
- (c) section **763**, if the administering authority submits a request in terms of that section for the disposal of the goods in terms of that section and the customs authority accedes to the request.

(2) Prohibited goods referred to in subsection (1)(a) or (b) must be handed over to, or kept under customs control for the purposes of –

- (a) the relevant administering authority, if the goods are to be dealt with in accordance with subsection (1)(a); or
- (b) the relevant administering authority or the South African Police Service, if the goods are to be dealt with in accordance with subsection (1)(b).

### **Disposal of prohibited goods by customs authority**

**763.** (1) The administering authority may, despite any other legislation administered by it, request the customs authority to dispose in terms of this section of prohibited goods detained in terms of section **757(1)** or (2), and if the customs authority accedes to the request, the customs authority must –

- (a) confiscate the goods by written notice to the person to whom the notice of detention was issued in terms of section **759**; and
- (b) dispose of the goods in terms of this section.

(2) Goods confiscated in terms of subsection (1) become the property of the state.

(3) Prohibited goods confiscated in terms of subsection (1) and consisting of goods referred to in –

- (a) section 755(a) or (b) must be destroyed or otherwise disposed of in a way that would not allow the goods into free circulation in the Republic; or
- (b) section 755(c) must be disposed of in any appropriate manner, including by –
  - (i) donating the goods for welfare purposes;
  - (ii) appropriating the goods to an organ of state, including SARS, for use by that organ of state;
  - (iii) making the goods available as humanitarian aid to communities in the Republic;
  - (iv) selling the goods in a manner determined by the Commissioner, which may include a sale –
    - (aa) by public auction;
    - (bb) by public tender; or
    - (cc) out of hand, when appropriate; or
  - (v) destroying the goods.

## ***Part 2: Restricted goods***

### **Restricted goods**

**764.** The following goods are restricted goods for purposes of this Act:<sup>403</sup>

- (a) any goods imported into the Republic if those goods are subject to legislation restricting the importation of those goods otherwise than on authority of a permit or other authorisation issued in terms of that legislation;
- (b) any goods in the possession of a person if those goods are subject to legislation restricting the possession of those goods by that person otherwise than on authority of a permit or other authorisation issued in terms of that legislation; or
- (c) any goods in the process of being exported from the Republic if those goods are subject to legislation restricting the exportation of those goods otherwise than on authority of a permit or other authorisation issued in terms of that legislation.

### **Clearance of restricted goods**

**765.** (1) No person may clear restricted goods in accordance with section 104 or 108 for home use or a customs procedure unless –

<sup>403</sup> To facilitate the implementation of this Act in relation to restricted goods, SARS has on its website a list of restricted goods to which Chapter 34 applies.

- (a) that person submits to the customs authority –
  - (i) a permit or other authorisation issued in terms of the legislation referred to in section **764**(a), (b) or (c) which authorises the import, possession or export of the goods; or
  - (ii) sufficient information to enable the customs authority to access the electronic database of the organ of state administering that legislation and the customs authority establishes from that database that a permit or other authorisation has been issued in terms of that legislation which authorises the import, possession or export of the goods; or
- (b) the administering authority administering that legislation submits to the customs authority in electronic format –
  - (i) a permit or other authorisation issued in terms of that legislation which authorises the import, possession or export of the goods; or
  - (ii) confirmation that such a permit or other authorisation has been issued.

(2) Imported restricted goods may, despite subsection (1) but subject to subsection (3), be cleared without a permit or other authorisation referred to in subsection (1) for –

- (a) warehousing pending compliance with the legislation referred to in section **764**(a) or (b), provided that the clearance of the goods for the warehousing procedure, the release of the goods for that procedure and the handling or transport of the goods in terms of that procedure, is not inconsistent with that legislation;<sup>404</sup>
- (b) transshipment or international transit, provided that –
  - (i) the goods are destined for a destination other than the Republic; and
  - (ii) the clearance of the goods for the transshipment or international transit procedure, the release of the goods for that procedure and the handling or transport of the goods in terms of that that procedure, is not inconsistent with the legislation referred to in section **764**(a) or (b) read with sections **199** and **229**; or
- (c) temporary admission, provided that the clearance of the goods for the temporary admission procedure, the release of the goods for that procedure and the temporary use in the Republic of the goods in terms of that that procedure, is not inconsistent with the legislation referred to in section **764**(a) or (b) read with section **250**.

(3) Subsection (2) does not apply to goods –

- (a) of which the import or possession is restricted in terms of legislation referred to in section **764**(a) or (b) for purposes of –

<sup>404</sup> See sections **285**(1)(d), **286**(1)(b) and **296**.

- (i) combating the illicit trade in narcotics, arms and ammunition, endangered species or any other goods prescribed by rule;
  - (ii) combating the spreading of contagious human, animal or plant diseases;
  - (iii) protecting the public against hazardous substances;
  - (iv) protecting public health or safety; or
  - (v) giving effect to any international obligation binding on the Republic; or
- (b) of a kind or category as may be prescribed by rule.

### **Detention of restricted goods**

**766.** (1) The customs authority must, subject to section **767**, detain restricted goods<sup>405</sup> wherever found in the course of exercising its enforcement functions<sup>406</sup> if the import, possession or export of the goods, as the case may be, is not authorised in terms of a permit or other authorisation issued in terms of legislation referred to in section **764**(a), (b) or (c) applicable to the goods.

(2) The customs authority must, subject to section **767**, detain goods as restricted goods –

- (a) if an administering authority administering the legislation in terms of which the goods are restricted goods, electronically or in writing –
  - (i) notifies the customs authority that those goods are restricted goods to which that legislation applies and that no permit or other authorisation has been issued in terms of that legislation authorising the import, possession or export of those goods; and
  - (ii) requests the customs authority to detain the goods; or
- (b) if a member of the South African Police Service, electronically or in writing, requests the customs authority to detain the goods for a contravention of legislation referred to in section **764**(a), (b) or (c).

### **Certain restricted goods excluded from detention**

**767.** (1) The following goods are, subject to subsection (2), excluded from detention in terms of section **766**:

- (a) imported restricted goods that are cleared for warehousing in terms of section **765**(2)(a) pending compliance with the legislation restricting the import or possession of the goods, provided that the required permit or other authorisation is submitted to

<sup>405</sup> If a customs officer has a suspicion that any specific goods are restricted goods but is unsure, the customs officer may detain the goods in terms of section **735**(1)(a)(ii) to determine whether the goods are restricted goods. If it is determined that the goods are restricted goods, this Chapter becomes applicable by virtue of section **736**.

<sup>406</sup> The only condition is that the goods are found whilst subject to customs control. See section **754**(2).

the customs authority within the period applicable to the goods in terms of section **290**;

- (b) imported restricted goods that are cleared in terms of section **765(2)(b)** for the transshipment or international transit procedure, provided that the goods are –
  - (i) dealt with strictly in accordance with the provisions of this Act relating to that procedure; and
  - (ii) exported from the Republic within the period applicable to those goods in terms of that procedure;
- (c) restricted goods that were on board a foreign-going vessel or aircraft when the vessel or aircraft entered the Republic, provided that the goods –
  - (i) are destined for a destination other than the Republic;
  - (ii) are not off-loaded in the Republic; and
  - (iii) remain on board that vessel or aircraft until the vessel or aircraft leaves the Republic; and
- (d) restricted goods that were on board a foreign-going vessel or aircraft when the vessel or aircraft entered the Republic as stores for that vessel or aircraft, provided that the goods –
  - (i) are reported in terms of section **331**;
  - (ii) are not off-loaded in the Republic; and
  - (iii) are used, or exported from the Republic, on board that vessel or aircraft as stores for that vessel or aircraft.

(2) Subsection (1) does not exclude from detention goods of which the import, possession or export is restricted in terms of legislation referred to in section **764** (a), (b) or (c) for purposes of –

- (a) combating the illicit trade in narcotics, arms and ammunition, endangered species or any other goods prescribed by rule;
- (b) combating the spreading of contagious human, animal or plant diseases;
- (c) protecting the public against hazardous substances; or
- (d) public health or safety.

### **Notice of detention**

**768.** (1) When detaining goods in terms of section **766** (1) or (2), the customs authority must –

- (a) issue a detention notice to that effect to the person in whose possession the goods are, or are believed to be, at the time of detention; and
- (b) by electronic message or facsimile transmission notify the following persons of the detention of the goods and the date from which the goods were detained:



- (i) the administering authority administering the legislation in terms of which the goods are restricted goods; and
- (ii) the member of the South African Police Service who requested the detention, if the goods were detained following a request in terms of section **766(2)(b)**.

(2) If the goods are at any licensed premises, the customs authority must electronically in accordance with section **879** also notify the licensee of the premises of the detention.

- (3) A notice of detention must –
- (a) identify the goods to which it relates;
  - (b) state the date of detention of the goods;
  - (c) state the reason for the detention; and
  - (d) contain any other particulars as may be prescribed by rule.

(4) Subsection (1)(a) does not apply in the case of goods that have first been detained in terms of section **735(1)(a)(ii)** and in respect of which a detention notice has been issued in terms of section **738**.

#### **Place where detained goods may be kept**

**769.** (1) Goods detained in terms of section **766(1)** or (2) may, pending the action to be taken in respect of the goods, be –

- (a) kept at the place where they were detained; or
- (b) removed to and stored –
  - (i) in a state warehouse in terms of section **559** or at another place determined in terms of section **569(1)**; or
  - (ii) at any other place of security most suitable in the circumstances as the customs authority may determine.

(2) No person may without the permission of the customs authority remove goods detained in terms of section **766(1)** or (2) from the place where they are kept or stored.

(3) If a place where goods are kept or to which they were removed is not a customs controlled area, that place must purposes of those goods be regarded to be a customs controlled area.

#### **Termination of detentions**

**770.** (1) The customs authority must immediately terminate the detention of goods if –

- (a) the goods were detained in error; or
- (b) the administering authority administering the legislation in terms of which the goods are restricted goods, electronically or in writing, requests the customs authority to terminate the detention;
- (c) the member of the South African Police Service who requested the detention of the goods in terms of section **766(2)(b)**, electronically or in writing, requests the customs authority to terminate the detention; or
- (d) a court so orders.

(2) The customs authority may, subject to subsection (3)–

- (a) on application by the importer of restricted goods referred to in section **764(a)**, or if the importer is not located in the Republic, the importer's registered agent, terminate the detention of the goods and allow the importer or the importer's registered agent to clear the goods for outright export and immediately export those goods from the Republic at own expense under supervision of the customs authority, provided that –
  - (i) the importer or the importer's registered agent did not conceal or attempt to conceal the goods, or did not divert or attempt to divert the goods for home use; and
  - (ii) the possession of those goods in the Republic by the importer or the importer's registered agent is not illegal; or
- (b) on application by the person who intended to export restricted goods referred to in section **764(c)** that were in free circulation before their detention, terminate the detention of the goods and allow those goods to revert to free circulation, provided that –
  - (i) that person did not conceal or attempt to conceal the goods for purposes of export; and
  - (ii) the possession of those goods in the Republic by that person is not illegal.

(3) The customs authority may grant an application in terms of subsection (2) only if the applicant submits written proof to the customs authority that the administering authority has no objection to the application.

### **Disposal of detained restricted goods**

**771.** (1) Goods detained in terms of section **766(1)** or (2) must be dealt with in accordance with –

- (a) the legislation in terms of which the goods are restricted goods; or
- (b) the legislation regulating the criminal justice system if and to the extent that the goods are needed as evidence in any criminal proceedings; or

- (c) section **772**, if the administering authority submits a request in terms of that section for the disposal of the goods in terms of that section and the customs authority accedes that the request.

(2) Restricted goods referred to in subsection (1)(a) or (b) must be handed over to, or kept under customs control for the purposes of –

- (a) the relevant administering authority, if the goods are to be dealt with in accordance with subsection (1)(a); or
- (b) relevant administering authority or the South African Police Service, if the goods are to be dealt with in terms of subsection (1)(b).

### **Disposal of restricted goods by customs authority**

**772.** (1) The administering authority may, despite any other legislation administered by it, request the customs authority to dispose in terms of this section of restricted goods detained in terms of section **766**(1) or (2), and if the customs authority accedes to the request, the customs authority must –

- (a) confiscate the goods by written notice to the person to whom the notice of detention was issued in terms of section **760**; and
- (b) dispose of the goods in terms of this section.

(2) Goods confiscated in terms of subsection (1)(a) become the property of the state.

(3) Restricted goods confiscated in terms of subsection (1)(a) must be disposed of in any appropriate manner, including by –

- (a) donating the goods for welfare purposes;
- (b) appropriating the goods to an organ of state, including SARS, for use by that organ of state;
- (c) making the goods available as humanitarian aid to communities in the Republic or to another country;
- (d) selling the goods, subject to subsection (4), in a manner determined by the Commissioner, which may include a sale –
- (i) by public auction;
- (ii) by public tender;
- (iii) out of hand, when appropriate; or
- (e) destroying the goods.

(4) Restricted goods confiscated in terms of subsection (1)(a) and consisting of goods referred to in section 764(a) may be sold in terms of subsection (3)(d) –

- (a) only if a permit or other authorisation has been issued in terms of the legislation restricting the import of the goods; and
- (b) only above a price set by the Commissioner at a level that will not undermine the local production of goods of the relevant kind.

(5) Restricted goods confiscated in terms of subsection (1)(a) and consisting of goods referred to in section 764(b) may not be disposed of in terms of subsection (3) in a way that would allow the goods into free circulation in the Republic without a permit or other authorisation issued in terms of the legislation restricting the possession of the goods.

### ***Part 3: Sectorally controlled goods***

#### **Sectorally controlled goods**

**773.** The following goods are sectorally controlled goods for purposes of this Act:<sup>407</sup>

- (a) any goods imported into the Republic if those goods are subject to compliance with sectoral legislation –
  - (i) providing for the rejection or condemnation of the goods if any standards or requirements applicable to those goods in terms of that legislation are not met; and
  - (ii) requiring for that purpose prior approval, inspection or vetting of the goods; or
- (b) any goods in the process of being exported from the Republic if those goods are subject to compliance with sectoral legislation –
  - (i) providing for the rejection of the goods for export if any standards or requirements applicable to those goods in terms of that legislation are not met; and
  - (ii) requiring for that purpose prior approval, inspection or vetting of the goods.

#### **Clearance of sectorally controlled goods**

**774.** (1) Section 104, read with section 106, applies to the clearance of sectorally controlled goods imported into the Republic, and section 108, read with section 110, applies to the clearance of sectorally controlled goods to be exported from the Republic.

<sup>407</sup> To facilitate the implementation of this Act in relation to sectorally controlled goods, SARS has on its website a list of such goods to which Chapter 34 applies.

(2) Clearance of sectorally controlled goods may be proceeded with despite the detention of the goods in terms of section **775**, but the goods may not be released for home use or a customs procedure whilst under detention.

### **Detention of sectorally controlled goods**

**775.** (1) The customs authority must, subject to section **776**, detain sectorally controlled goods<sup>408</sup> wherever found in the course of exercising its enforcement functions.<sup>409</sup>

(2) The customs authority must, subject to section **776**, detain goods as sectorally controlled goods if an administering authority electronically or in writing –

- (a) notifies the customs authority that those goods are sectorally controlled goods to which that legislation applies and that the goods must first be approved, inspected or vetted before the goods may be proceeded with in the customs process; and
- (b) requests the customs authority to detain the goods.

### **Certain sectorally controlled goods excluded from detention**

**776.** The following goods are, subject to subsection (2), excluded from detention in terms of section **775**:

- (a) sectorally controlled goods that were on board a foreign-going vessel or aircraft when the vessel or aircraft entered the Republic, provided that the goods –
  - (i) are destined for a destination other than the Republic;
  - (ii) are not off-loaded in the Republic; and
  - (iii) remain on board that vessel or aircraft until the vessel or aircraft leaves the Republic; and
- (b) sectorally controlled goods that were on board a foreign-going vessel or aircraft when the vessel or aircraft entered the Republic as stores for that vessel or aircraft, provided that the goods –
  - (i) are reported in terms of section **331**;
  - (ii) are not off-loaded in the Republic; and
  - (ii) are used, or exported from the Republic, on board that vessel or aircraft as stores for that vessel or aircraft.

### **Notice of detention**

**777.** (1) When detaining goods in terms of section **775** (1) or (2), the customs

<sup>408</sup> If a customs officer has a suspicion that any specific goods are sectorally controlled goods but is unsure, the customs officer may detain the goods in terms of section **735**(1)(a)(ii) to determine whether the goods are sectorally controlled goods. If it is determined that the goods are sectorally controlled goods, this Chapter becomes applicable by virtue of section **736**.

<sup>409</sup> The only condition is that the goods are found whilst subject to customs control. See section **754**(2).

authority must –

- (a) issue a detention notice to that effect to the person in whose possession the goods are, or are believed to be, at the time of detention; and
- (b) by electronic message or facsimile transmission notify the administering authority administering the legislation in terms of which the goods are sectorally controlled goods of the detention of the goods and the date from which the goods were detained.

(2) If the goods are at any licensed premises, the customs authority must electronically in accordance with section **879** also notify the licensee of the premises of the detention.

(3) A notice of detention must –

- (a) identify the goods to which it relates;
- (b) state the date of detention of the goods;
- (c) state the reason for the detention; and
- (d) contain any other particulars as may be prescribed by rule.

(4) Subsection (1)(a) does not apply in the case of goods that have first been detained in terms of section **735(1)(a)(ii)** and in respect of which a detention notice has been issued in terms of section **738**.

#### **Place where detained goods may be kept**

**778.** (1) Goods detained in terms of section **775(1)** or (2) may, pending the action to be taken in respect of the goods, be –

- (a) kept at the place where they were detained; or
- (b) removed to and stored –
  - (i) in a state warehouse in terms of section **559** or at another place determined in terms of section **569(1)**; or
  - (ii) at any other place of security most suitable in the circumstances as the customs authority may determine.

(2) No person may without the permission of the customs authority remove goods detained in terms of section **775(1)** or (2) from the place where they are kept or stored.

(3) If a place where goods are kept or to which they were removed is not a customs controlled area, that place must for purposes of those goods be regarded to be a customs controlled area.

### **Termination of detentions**

**779.** (1) The customs authority must immediately terminate the detention of sectorally controlled goods if –

- (a) the goods were detained in error; or
- (b) the administering authority confirms that the detention of the goods may be terminated; or
- (c) a court so orders.

(2) Sectorally controlled goods of which the detention was terminated in terms of subsection (1) must be allowed to be proceeded with in the customs process.

### **Disposal of detained sectorally controlled goods**

**780.** (1) Imported goods referred to in section **773(a)** that are disapproved, rejected or condemned in terms of the applicable sectoral legislation, must be dealt with in accordance with –

- (a) that legislation; or
- (b) the legislation regulating the criminal justice system if and to the extent that the goods are needed as evidence in any criminal proceedings.

(2) Goods destined for export referred to in section **773(b)** that were in free circulation before the detention or before their clearance for export, and that are disapproved or rejected for export in terms of the applicable sectoral legislation, may not be released for export but may revert to free circulation unless that legislation determines otherwise.

### ***Part 3: Other matters***

#### **Inconsistency of this Chapter with other legislation prohibiting or restricting the import, possession or export of goods**

**781.** This Chapter may not be read as affecting the implementation of other legislation referred to in section **755**, **764** or **773** prohibiting, restricting or controlling the import, possession or export of goods to the extent that this Chapter is inconsistent with that other legislation.

#### **Rules to facilitate implementation of this Chapter**

**782.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) to give effect to the Republic's obligations in terms of an international agreement relating to the prohibition or restriction or controlling of the import into or export from the Republic of goods to which the agreement relates, including rules –
  - (i) prohibiting the import into or export from the Republic of such goods, including goods produced through the exploitation of children; and
  - (ii) restricting the import into or export from the Republic of such goods otherwise than on authority of a permit issued by the customs authority or another organ of state;
- (b) prescribing procedures, forms and timelines in connection with applications referred to in sections **761(2)** and **770(2)**; and
- (c) prescribing the time within and manner in which the on-board operator of a foreign-going vessel or aircraft entering the Republic must declare prohibited goods on board that vessel or aircraft.<sup>410</sup>

### **Offences in terms of this Chapter**

- 783.** (1) A person is guilty of an offence if that person –
- (a) contravenes section **756(1)** or **765(1)**;
  - (b) colludes or makes an arrangement of whatever nature with any other person inside or outside the Republic to defeat or evade a provision of this Chapter in relation to any prohibited, restricted or sectorally controlled goods imported or to be imported into, or exported or to be exported from, the Republic;
  - (c) ...
- (2) An offence referred to in subsection (1) is a Category 1 offence.

## **CHAPTER 35 COUNTERFEIT GOODS**

### **Definitions**

- 784.** (1) In this Chapter, unless the context otherwise indicates –
- ‘counterfeiting’**, **‘counterfeit goods’**, **‘counterfeit goods depot’**, **‘intellectual property right’**, **‘owner’** and **‘protected goods’** have the meanings assigned thereto in the Counterfeit Goods Act, and –

**“affected party”**, in relation to goods suspected of being counterfeit goods –

- (a) that are cleared for home use or a customs procedure, means –
  - (i) the person clearing the goods;
  - (ii) the person on whose behalf the goods are cleared; or

<sup>410</sup> Travellers and crew members entering the Republic must in terms of section **466** declare any prohibited goods that they have with them.



- (iii) a person who acts in relation to those goods on behalf of a person referred to in subparagraph (i) or (ii); or
- (b) that have not been cleared, means –
  - (i) the consignee, consignor, importer, exporter, owner, manufacturer or person having control of those goods or in whose possession the goods are; or
  - (ii) a person who acts in relation to those goods on behalf of a person referred to in subparagraph (i);

**“right-holder”**, in relation to protected goods, means –

- (a) the owner of an intellectual property right in respect of those protected goods;
- (b) a licensee of an intellectual property right in respect of those protected goods;
- (c) a person who has the right to import into, distribute in or export from the Republic those protected goods; or
- (d) a person who acts on behalf of a person referred to in paragraph (a), (b) or (c) to protect the intellectual property right in respect of those protected goods;

### **Purpose and application of this Chapter**

**785.** (1) The purpose of this Chapter is to provide for a customs role in combating the trade in counterfeit goods imported into or in the process of being exported from the Republic.

(2) This Chapter applies to all counterfeit goods, including goods suspected to be counterfeit goods, that in whatever way have become subject to customs control, but may not be applied to goods that have already been seized in terms of the Counterfeit Goods Act.<sup>411</sup>

(3) In the event of an inconsistency between a provision of this Chapter and the Counterfeit Goods Act, the provision of this Chapter prevails.

### ***Part 1: Detention of suspected counterfeit goods when prior application has been granted***

#### **Application for detention of suspected counterfeit goods**

**786.** (1) A person claiming to be a right-holder in relation to any protected goods may apply to the customs authority for assistance in combating the trade in counterfeit goods that infringe the intellectual property right in respect of those protected goods by –

- (a) detaining any goods suspected of infringing that intellectual property right as and when any such goods become subject to customs control; and

<sup>411</sup> Goods seized in terms of the Counterfeit Goods Act must be dealt with in terms of that Act.

- (b) dealing with such detained goods in accordance with this Chapter.
  - (2) An application must –
    - (a) be on a form as may be prescribed by rule and contain full particulars of the matters specified therein;
    - (b) give sufficient particulars of the protected goods in respect of which customs assistance is sought in terms of this Chapter;
    - (c) describe the essential physical and other distinctive features, elements and characteristics of goods that may indicate that goods are counterfeit goods that infringe the intellectual property right in respect of those protected goods;
    - (d) be accompanied by evidence –
      - (i) that an intellectual property right subsists in respect of the goods in respect of which customs assistance is sought in terms of this Chapter;
      - (ii) that those goods are protected goods;
      - (iii) that the applicant is a right-holder in relation to those protected goods;
      - (iv) that counterfeit goods infringing the intellectual property right in respect of those protected goods are believed on reasonable grounds to be imported into or exported from the Republic; and
      - (v) of the date on which that intellectual property right will expire; and
    - (e) be accompanied by –
      - (i) an indemnity in terms of which the applicant indemnifies the Commissioner against any liability that may arise from any actions, proceedings, claims or demands whatsoever which may be made or taken against the Commissioner in providing the required assistance;
      - (ii) an undertaking in terms of which the applicant undertakes to pay any costs or expenses incurred by, and any charges due to, the Commissioner in providing the required assistance; and
      - (iii) an administration fee as may be prescribed by rule.

### **Consideration of applications**

- 787.** (1) The customs authority must promptly consider an application in terms of section **786**, and must grant the application if satisfied on face value of the evidence and motivations submitted by the applicant—
- (a) that the goods in respect of which customs assistance is sought in terms of this Chapter are protected goods;
  - (b) that an intellectual property right subsists in respect of those goods;
  - (c) that the applicant is a right-holder in relation to those protected goods; and

- (d) that the fear of the applicant that the intellectual property right claimed to subsist in respect of those goods may be infringed, appears to be reasonable in the circumstances.

(2) (a) When granting the application, the customs authority must determine the period for which customs assistance in terms of this Chapter will be provided in relation to the protected goods applied for.

(b) A period determined in terms of paragraph (a) may not extend beyond the date on which the intellectual property right in respect of those protected goods will expire.

### **Detention of suspected counterfeit goods**

**788.** (1) If a customs officer has reasonable cause to suspect that any specific goods are counterfeit goods that infringe an intellectual property right in respect of protected goods for which an application was granted in terms of section **787**, the customs officer must –

- (a) detain the goods by issuing a detention notice to –
- (i) any person who in relation to the suspected counterfeit goods is an affected party; or
  - (ii) the person in whose possession the goods are, or are believed to be, at the time of detention; and
- (b) notify the right-holder who brought the application of –
- (i) the detention of the goods; and
  - (ii) the date from which the goods are detained.

- (2) Subsection (1) applies to any suspected counterfeit goods found –
- (a) during clearance or release procedures applicable to the goods;
  - (b) during an inspection in terms of this Act;
  - (c) when a person complies with a request by a customs officer in terms of this Act to produce any goods; or
  - (d) during a search in terms of this Act of any premises, or of any vessel, aircraft, train, railway carriage, vehicle or other means of transport, or of any person.

(3) A customs officer's suspicion in terms of subsection (1) must take into account the particulars referred to in section **786(2)(c)** stated in the right-holder's application which describe the essential physical and other distinctive features, elements and characteristics of goods that may indicate that the goods are counterfeit goods that infringe the intellectual property right in respect of the protected goods for which the application was granted.

- (4) A detention notice must –
- (a) identify the goods to which it relates;
  - (b) state the date from which the goods are detained;
  - (c) state the reason for the detention;
  - (d) contain any other particulars as may be prescribed by rule; and
  - (e) be delivered by electronic message, by facsimile transmission or by hand.
- (5) Goods detained in terms of subsection (1) must be dealt with in terms of Part 3.

***Part 2: Detention of suspected counterfeit goods in absence of prior approved application***

**Discovery of suspected counterfeit goods**

**789.** (1) If a customs officer has reasonable cause to suspect that any specific goods are counterfeit goods that infringe the intellectual property right in respect of any protected goods for which no application was made and granted in terms of Part 1, the customs officer must notify the following persons of the goods and the fact that the goods are suspected counterfeit goods:

- (a) a person who is believed by the customs officer to be a right-holder in respect of the protected goods in respect of which an intellectual property right is suspected of being infringed; and
- (b) any person who in relation to the suspected counterfeit goods is an affected party.

- (2) Subsection (1) applies to any suspected counterfeit goods found –
- (a) during clearance or release procedures applicable to the goods;
  - (b) during an inspection in terms of this Act;
  - (c) when a person complies with a request by a customs officer in terms of this Act to produce any goods; or
  - (d) during a search in terms of this Act of any premises, or of any vessel, aircraft, train, railway carriage, vehicle or other means of transport, or of any person.

(3) A notification in terms of subsection (1) must be delivered by electronic message, by facsimile transmission or by hand.

(4) A customs officer is not obliged to comply with subsection (1) unless the following information is readily available to the customs officer:

- (a) the name of a person who is a right-holder in respect of the protected goods in respect of which an intellectual property right is suspected of being infringed; and

- (b) the electronic address or facsimile number of that person.

(5) Goods to which subsection (1) has been applied may not be released for home use or a customs procedure pending an application for the detention of the goods in terms of section 790.

**Application for detention of suspected counterfeit goods**

**790.** (1) A person notified in terms of section 789(1)(a) of suspected counterfeit goods, or any other person claiming to be a right-holder in relation to the protected goods in respect of which an intellectual property right is suspected of being infringed by those goods, may, within three working days after the date of notification, apply to the customs authority for the detention of the suspected counterfeit goods and for the goods to be dealt with in terms of this Chapter.

- (2) An application must –
- (a) be on a form as may be prescribed by rule and contain full particulars of the matters specified therein;
  - (b) give sufficient particulars of the protected goods which are the subject of the application;
  - (c) describe the essential physical and other distinctive features, elements and characteristics of goods that may indicate that the goods are counterfeit goods that infringe the intellectual property right in respect of those protected goods;
  - (d) be accompanied by evidence –
    - (i) that an intellectual property right subsists in respect of the goods that are the subject of the application;
    - (ii) that those goods are protected goods;
    - (iii) that the applicant is a right-holder in relation to those protected goods; and
    - (iv) of the date on which that intellectual property right will expire; and
  - (e) be accompanied by –
    - (i) an indemnity in terms of which the applicant indemnifies the Commissioner against any liability that may arise from any actions, proceedings, claims or demands whatsoever which may be made or taken against the Commissioner in dealing with the goods in terms of this Chapter;
    - (ii) an undertaking in terms of which the applicant undertakes to pay any costs or expenses incurred by, and any charges due to, the Commissioner in dealing with the goods in terms of this Chapter; and
    - (iii) an administration fee as may be prescribed by rule.

### **Consideration of applications**

**791.** (1) The customs authority must promptly consider an application in terms of section **790**, and must grant the application if satisfied on face value of the evidence and motivations submitted by the applicant—

- (a) that the goods which are the subject of the application are protected goods;
- (b) that an intellectual property right subsists in respect of those goods;
- (c) that the applicant is a right-holder in relation to those protected goods; and
- (d) that the goods suspected to be counterfeit goods are counterfeit goods that infringe the intellectual property right in respect of those protected goods.

(2) If the application is granted –

- (a) the customs authority must detain the goods suspected to be counterfeit goods by issuing a detention notice to –
  - (i) any person who in relation to the suspected counterfeit goods is an affected party; or
  - (ii) the person in whose possession the goods are, or are believed to be, at the time of detention;
- (b) the customs authority must notify the applicant of the date of detention of the goods; and
- (c) the goods must be dealt with in terms of Part **3**.

### ***Part 3: Procedures for detained suspected counterfeit goods***

#### **Inventory of detained goods**

**792.** The customs authority must in accordance with any requirements as may be prescribed by rule make an inventory of goods detained in terms of Part **1** or **2**.

#### **Furnishing of personal details of affected parties to right-holders**

**793.** (1) The customs authority must, at the request of a right-holder whose application has been granted in terms of section **787** or **791**, furnish the right-holder with the name and address, and contact details, of a person who is an affected party in relation to the detained goods, if available to the customs authority.

(2) The right-holder may not use the personal details of an affected person furnished to the right-holder in terms of subsection (1) for any purpose other than for the purpose of this Chapter or the Counterfeit Goods Act.

#### **Furnishing of samples of detained goods to right-holders**

**794.** (1) The customs authority must, at the request of a right-holder whose application has been granted in terms of section **787** or **791**, furnish the right-holder with samples of the goods detained in terms of Part **1** or **2**.

(2) The right-holder—

- (a) is responsible for the collection and return of the samples;
- (b) must acknowledge receipt of the samples;
- (c) must return the samples before the detention of the goods is ended;
- (d) may not use the samples for any purpose other than for the purpose of this Chapter or the Counterfeit Goods Act; and
- (e) must comply with such other requirements in relation to those samples as may be determined by the customs authority or as may be prescribed by rule.

(3) Any handling of or dealing with samples by the right-holder is at the risk and expense of the right-holder.

### **Onus on right-holders to protect their rights**

**795.** (1) The right-holder whose application has been granted in terms of section **787** or **791** must, within a period of ten calendar days after the detention of the goods, or within such extended period as may be granted in terms of section **875**, submit to the customs authority a notice<sup>412</sup> indicating whether or not the right-holder intends to apply to a court for a finding that the detained goods are counterfeit goods that infringe an intellectual property right in respect of protected goods for which the application in terms of section **787** or **791** was granted.

(2) A copy of the notice submitted to the customs authority in terms of subsection (1) must simultaneously be submitted to a person who in relation to the detained goods is an affected party if the name and address or contact details of that person are available to or reasonably determinable by the right-holder.

(3) If the right-holder submits a notice indicating that the right-holder –

- (a) intends to apply to a court for a finding that the detained goods are counterfeit goods, the goods must be removed to a counterfeit goods depot in accordance with section **796**; or
- (b) intends not to apply to a court for a finding that the detained goods are counterfeit goods, the customs authority must immediately terminate the detention of the goods,

<sup>412</sup> For methods of submission of notices see section **878**.

but no such termination of a detention affects the application of the Counterfeit Goods Act in relation to those goods.

### **Removal of detained goods to counterfeit goods depots**

**796.** (1) Detained goods that must in terms of section **795(3)(a)** be removed to a counterfeit goods depot must be removed to the depot within –

- (a) seven days of submission of notice referred to in section **795(1)** to the customs authority; or
- (b) such extended period as may be granted in terms of section **875**.

(2) (a) The right holder must remove the goods under supervision of a customs officer to a counterfeit goods depot-at the risk and expense of the right-holder.

(b) The customs officer under whose supervision the goods are removed must obtain an acknowledgement of receipt of the goods on the inventory made in terms of section **792** from the person in charge of the counterfeit goods depot.

(3) If the right-holder fails to remove the goods to a counterfeit goods depot within the applicable time referred to in subsection (1), the customs authority may arrange for the removal of the goods to a counterfeit goods depot at the risk and expense of the right-holder.

### **Court applications by right-holders**

**797.** (1) If a right-holder has submitted a notice in terms of section **795(1)** indicating that the right-holder intends to apply to a court for a finding that the detained goods are counterfeit goods, the right-holder must within a period of ten calendar days after the customs authority has been notified in terms of subsection (1), or within such extended period as may be granted in terms of section **875**, apply to a court for such a finding.

(2) A court application referred to in subsection (1) may be brought on its own or form part of any other civil proceedings instituted by the right-holder in connection with the detained goods against a person who in relation to those goods is an affected party.

(3) If the right-holder fails to comply with subsection (1), the customs authority must immediately terminate the detention of the goods, but no such termination of a detention affects the application of the Counterfeit Goods Act in relation to those goods.

### **Finding by court that detained goods are counterfeit goods**

**798.** (1) If a court adjudicating an application referred to in section **797(1)** finds that the detained goods are counterfeit goods that infringe an intellectual property right in respect of



protected goods for which an application in terms of section **787** or **791** was granted, the court may, in addition to any other order it may issue –

- (a) award title in the detained goods to the right-holder who brought the court application without any obligation on the right-holder to pay compensation; or
- (b) order a person who is an affected party in relation to the detained goods to disclose to the right-holder –
  - (i) the source from which those goods have been obtained;
  - (ii) the identity of the persons involved or ostensibly involved in the importation, exportation, manufacture, production and distribution of those goods; and
  - (iii) in the channels of distribution of those goods.

(2) If the court makes no award as to title in the goods as provided in subsection (1)(a), the goods must be dealt with in terms of Chapter **33** as prohibited goods.

#### **Finding by court that detained goods are not counterfeit goods**

**799.** If a court adjudicating an application referred to in section **797**(1) finds that the detained goods are not counterfeit goods that infringe an intellectual property right in respect of protected goods for which an application in terms of section **787** or **791** was granted –

- (a) the court may, in addition to any other order it may issue, order the right-holder who brought the application to pay damages in an amount determined by the court to a person who is an affected party in relation to the goods; and
- (b) the customs authority must terminate the detention of the goods immediately.

#### **Discharge of goods from counterfeit goods depots**

**800.** (1) The person in charge of a counterfeit goods depot to which goods detained in terms of Part **1** or **2** were removed –

- (a) is responsible for the safe storage of those goods in the depot;
- (b) may not give delivery of the goods to any person without the written permission of the customs authority; and
- (c) is liable for any tax that is or may become payable on the goods if that person gives delivery of the goods otherwise than in accordance with such written permission.

(2) If title in the detained goods stored in a counterfeit goods depot is awarded in terms of section **798**(1)(a) to the right-holder who brought the court application, the right-holder becomes entitled to the goods provided that the right-holder may take delivery of the goods only in accordance with –

- (a) the other provisions of this Act applicable to the clearance and release of goods for home use or a customs procedure, including provisions of this Act and other

- applicable legislation relating to the payment of tax; and
- (b) any conditions the customs authority may impose.

(3) If the detained goods must in terms of section **798(2)** be dealt with as prohibited goods, the goods may be removed from the counterfeit goods depot where the goods are stored only in accordance with the directions of the customs authority.

(4) If the detention of goods stored in a counterfeit goods depot is terminated in terms of section **799(b)**, the goods must at the risk and expense of the person claimed to be the right-holder be returned to the place from where they were removed to the counterfeit goods depot unless the affected party and the customs authority agree otherwise.

#### ***Part 4: General provisions***

##### **Court applications by affected parties**

**801.** Nothing in this Chapter may be read as preventing a person who is an affected party in relation to goods detained in terms of Part **1** or **2** from applying to a court for –

- (a) an order that the detained goods are not counterfeit goods or that the detention of the goods be terminated; or
- (b) any other appropriate relief.

##### **Seizure of detained goods in terms of Counterfeit Goods Act**

**802.** If goods detained in terms of Part **1** or **2** are seized in terms of the Counterfeit Goods Act –

- (a) the detention of the goods must be regarded to be terminated; and
- (b) this Chapter no longer applies to the goods.

##### **Rules**

**803.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules –

- (a) regarding all matters required or permitted in terms of this Chapter to be prescribed by rule;
- (b) prescribing the procedures to be followed by customs officers when exercising their powers and duties in terms of this Chapter;
- (c) prescribing forms required to be completed for the purposes of this Chapter;
- (d) exempting any class or kind of goods from this Chapter;
- (e) prescribing the format and contents of indemnities or undertakings to be furnished by right-holders in terms of this Chapter;

- (f) prescribing the amount of administration fees that must accompany applications in terms of this Chapter;
- (g) prescribing any conditions or procedures relating to suspected counterfeit goods detained in terms of this Chapter; and
- (h) concerning any other matter to facilitate the application of this Chapter.

### **Offences in terms of this Chapter**

**804.** (1) A person –

- (a) who is the right-holder in respect of goods is guilty of an offence if that person contravenes or fails to comply with section **793(2)**, **794(2)** or **796(1)** or (2); or
- (b) in charge of a counterfeit goods depot is guilty of an offence if that person contravenes or fails to comply with section **800(1)(b)**.

## **CHAPTER 36**

### **RECONSIDERATION OF DECISIONS AND DISPUTE RESOLUTION**

#### ***Part 1: General provisions***

#### **Definitions**

**805.** For the purposes of this Chapter –

“**aggrieved person**” or “**person aggrieved**”, in relation to a decision, means a person who is affected by the decision and who has a right to institute judicial proceedings in respect of that decision should that person elect to do so;

“**alteration**”, in relation to a decision, includes the substitution of a decision;

“**day**” means any day other than a Saturday, Sunday or a public holiday, subject to section **841A**;

“**decision**”, in relation to the Commissioner, a customs officer or a SARS official,–means a decision in terms of this Act or the Customs Duty Act, or in terms of a delegation or sub-delegation in terms of this Act or the Customs Duty Act, by the Commissioner, a customs officer<sup>413</sup> or a SARS official who is not a customs officer, and includes –

- (a) any confirmation, alteration or repeal of such a decision;
- (b) any refusal or omission to take such a decision within the required or a reasonable time, if this Act or the Customs Duty Act requires such a decision to be taken;
- (c) any action taken as a result of such a decision; or

<sup>413</sup> This also covers decisions taken by the “customs authority” as a power conferred in terms of this Act on the “customs authority” can, per definition of that term in section 1, only be taken by the Commissioner or a customs officer to whom the power has been delegated in terms of section 19.

- (d) any refusal or omission to take action as a result of such a decision within the required or a reasonable time, if this Act or the Customs Duty Act requires such action to be taken;

**“dispute”** means a disagreement on –

- (a) the facts relating to a matter arising from the implementation of this Act or the Customs Duty Act;
- (b) the interpretation of the law applicable those facts; or
- (c) both the facts and the interpretation of the law applicable to those facts;

**“settle”**, in relation to a dispute between the Commissioner and another person, means an agreement between the Commissioner and that other person in terms of which the dispute is settled, in whole or in part, by compromising the disputed matter in such a way that neither the Commissioner nor the other person accepts the other party’s –

- (a) version or interpretation of the facts;
- (b) interpretation of the law applicable to those facts; or
- (c) version or interpretation of the facts and the interpretation of the law applicable to those facts;

**“supervisor”**, in relation to a customs officer or SARS official, means any official in the SARS hierarchical structure competent to issue work instructions to that customs officer or SARS official.

### **Purpose and application of this Chapter**

**806.** The purpose of this Chapter is to provide for –

- (a) the internal reconsideration of decisions of the Commissioner, customs officers or SARS officials who are not customs officers, in implementing this Act or the Customs Duty Act,<sup>414</sup> and
- (b) the settling of disputes arising from the implementation or interpretation of this Act or the Customs Duty Act.

### **Proceedings for internal reconsideration of decisions**

**807.** A decision of the Commissioner, a customs officer or a SARS official may be reconsidered and be confirmed, altered or repealed –

- (a) in terms of Part 2 of this Chapter, either –

<sup>414</sup> This includes decisions taken by customs officers and SARS officials in terms of this Chapter as supervisors of other customs officers and SARS officials.

- (i) on initiative by the Commissioner, whether or not the Commissioner took the decision;
  - (ii) on own initiative by the customs officer or SARS official who took the decision;
  - (iii) on initiative by the supervisor of the customs officer or SARS official who took the decision; or
  - (iv) on written request by an aggrieved person;
- (b) on an appeal lodged by an aggrieved person in terms of Part 3 of this Chapter; or
  - (c) as part of the settlement of a dispute in terms of Part 4 of this Chapter.

### **Proceedings for dispute resolution**

**808.** A dispute between the Commissioner and another person arising from the implementation of this Act or the Customs Duty Act may be resolved through –

- (a) any of the proceedings referred to in section 807;
- (b) procedures for the settlement of disputes in terms of Part 4 of this Chapter;
- (c) alternative dispute resolution procedures in terms of Part 5 of this Chapter; or
- (d) judicial proceedings.

### **Proceedings to be instituted either personally or through duly authorised representatives**

**809.** The proceedings available to an aggrieved person in terms of sections 807 and 808 may be instituted either personally or through a duly authorised representative.

### **Reasons for decisions**

**810.** (1) A person aggrieved by a decision of the Commissioner, a customs officer or a SARS official is entitled to obtain the reasons for the decision from SARS to enable that person to consider any appropriate action, including any proceedings available to that person in terms of sections 707 and 808.

(2) Reasons must be given in writing within 30 calendar days of receipt of a written request by the person requiring the reasons.

### **Payment of amounts due to Commissioner not affected by section 807 or 808 proceedings**

**811.** (1) No proceedings referred to in section 807 or 808 suspend or defer –

- (a) a person's obligation to pay to the Commissioner an amount due in terms of this Act or the Customs Duty Act; or

- (b) the Commissioner's right to recover from a person an amount owed in terms of this Act or the Customs Duty Act.

(2) Subsection (1) does not apply if –

- (a) the Commissioner agrees to the suspension or deferment of a payment pending conclusion of any proceedings referred to in section **807** or **808**; or
- (b) a court suspends or defers a payment pending conclusion of any such proceedings.

## ***Part 2: Reconsideration of decisions on customs initiative***

### **Purpose of this Part**

**812.** The purpose of this Part is to confer on the Commissioner, customs officers and SARS officials a discretionary power to reconsider their own decisions and the decisions of lower order decision makers, and to confirm, alter or repeal those decisions subject to appropriate limitations where rights have accrued as a result of such decisions.

### **Reconsideration of own decisions**

**813.** The Commissioner, a customs officer or a SARS official may, at any time, on own initiative or on written request by an aggrieved person –

- (a) reconsider a decision taken by him or her; and
- (b) subject to sections **816** and **817** –
  - (i) confirm, alter or repeal the decision; and
  - (ii) end or undo any action taken as a result of the decision, to the extent that this is necessary to alter or repeal the decision.

### **Reconsideration of decisions by Commissioner**

**814.** The Commissioner may, at any time, on own initiative or on written request by an aggrieved person –

- (a) reconsider a decision taken by a customs officer or a SARS official; and
- (b) subject to sections **816** and **817** –
  - (i) confirm, alter or repeal the decision; and
  - (ii) end or undo any action taken as a result of the decision, to the extent that this is necessary to alter or repeal the decision.

### **Reconsideration of decisions by supervisors**

**815.** An official who is a supervisor of a customs officer or a SARS official may, at any time, on own initiative or on written request by an aggrieved person –

- (a) reconsider a decision of that customs officer or SARS official; and
- (b) subject to sections **816** and **817** –

- (i) confirm, alter or repeal the decision; and
- (ii) end or undo any action taken as a result of the decision, to the extent that this is necessary to alter or repeal the decision.

### **When decisions may or may not be reconsidered**

**816.** (1) A decision may be reconsidered and confirmed, altered or repealed in terms of section **813**, **814** or **815** either before or after the person to whom the decision relates has been notified of the decision.

(2) The following decisions may not be reconsidered or altered in terms of this Part:

- (a) A decision on an administrative appeal in terms of Part **3** of this Chapter;
- (b) a decision which is the subject of –
  - (i) such an appeal;
  - (ii) alternative dispute resolution proceedings in terms of Part **5** of this Chapter; or
  - (iii) judicial proceedings; and
- (c) a decision which is part of a settlement in terms of Part **4** of this Chapter.

### **Effective date for alteration or repeal of decisions**

**817.** A decision may be altered or repealed in terms of section **813**, **814** or **815** with effect from a date determined by the official altering or repealing the decision, which may be a date before, on or after the decision to alter or repeal was taken.

### **Reconsideration of decisions on request of aggrieved persons**

**818.** (1) An aggrieved person has no right to demand that a decision be reconsidered in terms of this Part, and the Commissioner, a customs officer or a SARS official who receives a request from an aggrieved person in terms of this Part for reconsideration of a decision is under no obligation to consider or comply with the request.

(2) An aggrieved person who submitted a request in terms of subsection (1) must provide such information concerning the request as the Commissioner, a customs officer or a SARS official may require.

(3) Subsection (1) does not affect an aggrieved person's right to lodge an appeal in terms of Part **3**.

## ***Part 3: Administrative appeals***

### **Purpose of this Part**

**819.** The purpose of this Part is to provide for administrative appeals by persons aggrieved by decisions of customs officers or SARS officials, including decisions taken by –

- (a) customs officers on behalf of the Commissioner or as the customs authority; and
- (b) SARS officials on behalf of the Commissioner.

### **Appeals against decisions**

**820.** (1) A person aggrieved by a decision of a customs officer or a SARS official may appeal against the decision either to –

- (a) the Commissioner; or
- (b) the official in charge of the Customs Office where that customs officer or SARS official is stationed.

(2) If a decision falls within a category of decisions that may in terms of section **824(1)(b)** be dealt with by an appeal committee, subsection (1)(a) and (b) does not apply and the aggrieved person must appeal against the decision to the appeal committee that has jurisdiction to consider the appeal.

### **When appeal may not be lodged**

**821.** An appeal in terms of this Part may not be lodged if the decision is the subject of –

- (a) alternative dispute resolution in terms of Part **3** of this Chapter; or
- (b) judicial proceedings.

### **How and when to appeal**

**822.** (1) An appeal against a decision must be –

- (a) in the manner and on the form as may be prescribed by rule;
- (b) submitted to the SARS Office which communicated the decision to the appellant; and
- (c) accompanied by –
  - (i) a motivation setting out the grounds of appeal; and
  - (ii) any other documents and information as may be prescribed by rule.

(2) An appeal must reach the SARS Office referred to in subsection (1)(b) –

- (a) within 30 calendar days from the date such person became aware of the decision, or if such person requested reasons for the decision, within 30 calendar days from the date such person received those reasons; or
- (b) if the date on which such person became aware of the decision is in dispute, within 30 calendar days from the date such person is reasonably expected to have become aware of such decision.



(3) A period referred to in subsection (2) may not be extended in terms of section **875** by more than fifteen calendar days.

#### **Time within which appeals must be decided**

**823.** (1) An appeal in terms of this Part must be decided –

- (a) within 60 calendar days from the date of receipt of the appeal by the SARS Office referred to in section **822**(1)(b); or
- (b) if the appeal was incomplete, within 60 calendar days from the date on which the complete appeal was received by that SARS Office.

(2) The Commissioner may extend the period referred to in subsection (1) by no more than 30 calendar days.

(3) An appeal must be regarded as having been upheld if the appeal is not decided within the period mentioned in subsection (1) or as extended in terms of subsection (2).

(4) Once an appeal is decided, the appellant ~~is~~ must promptly be notified of the decision, in writing.

#### **Appeal committees**

**824.** (1) The Commissioner may by rule –

- (a) establish appeal committees –
  - (i) to consider appeals against decisions of customs officers and SARS officials; and
  - (ii) either to decide those appeals themselves or make recommendations to the Commissioner on the decision of such appeals; and
- (b) prescribe the categories of decisions that may or must be dealt with by appeal committees.

(2) The Commissioner may in terms of subsection (1) establish –

- (a) specialist appeal committees, for appeals against specific categories of decisions of customs officers and SARS officials wherever stationed; or
- (b) one or more appeal committees for each SARS Office, for appeals against decisions of customs officers and SARS officials stationed at that Office, excluding appeals against categories of decisions referred to in paragraph (a).

(3) An appeal committee may be composed of SARS officials only or of both SARS officials and other persons.

(4) The Commissioner must designate one of the members of an appeal committee as the chairperson of the committee.

### **Lapsing of appeals**

**825.** An appeal in terms of section **820** lapses if the aggrieved person, before the appeal is decided –

- (a) institutes legal proceedings with regard to the relevant decision;
- (b) becomes a party to alternative dispute resolution procedures in terms of Part 5 with regard to the relevant decision; or
- (c) withdraws the appeal.

### **Rules to facilitate implementation of this Part**

**826.** Rules made in terms of section **870** to facilitate the implementation of this Part may include rules prescribing –

- (a) the procedures that must be followed in connection with the lodging, consideration and decision of appeals, including any forms that may or must be used in these procedures;
- (b) the matters for which, or the circumstances in which, non-compliance with procedural requirements may be condoned;
- (c) the giving of reasons for decisions taken on appeal;
- (d) the categories of decisions that may be appealed against to an appeal committee;
- (e) the powers and duties of appeal committees;
- (f) the convening of, and procedures at, meetings of appeal committees, including quorum requirements;
- (g) matters relating to persons serving on appeal committees other than SARS officials, including –
  - (i) qualification requirements;
  - (ii) term of office;
  - (iii) conditions of appointment and remuneration;
  - (iv) ethical conduct; and
  - (v) resignation or removal from office;
- (h) administrative assistance to appeal committees; and
- (i) access to information relevant for an appeal by appeal committees.

#### ***Part 4: Settlement of disputes***

##### **Purpose of this Part**

**827.** The purpose of this Part is to regulate the settlement of disputes between the Commissioner and other parties, and to specify –

- (a) the circumstances when it would be inappropriate for the basic principle referred to in section **828** to be tempered; and
- (b) the circumstances when it would be appropriate for the basic principle to be tempered and a decision to be taken to settle a dispute.

##### **Basic principle governing this Part**

**828.** This Part must be applied against the background of –

- (a) the basic principle in law that it is the duty of the Commissioner to assess and collect taxes according to legislation enacted by Parliament and not to forgo any taxes properly chargeable and payable; and
- (b) the exception that circumstances may require the strictness and rigidity of this basic principle to be tempered where it is in the best advantage of the state.

##### **Circumstances when inappropriate to settle**

**829.** It is inappropriate and not to the best advantage of the state to settle a dispute when —

- (a) the dispute relates to intentional tax evasion or fraud and none of the circumstances contemplated in section **830** exist;
- (b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;
- (c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;
- (d) the pursuit of the matter through the courts will significantly promote compliance with tax legislation and the case is suitable for this purpose; or
- (e) the other party to the dispute has not complied with provisions of legislation administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

##### **Circumstances when appropriate to settle**

**830.** (1) It is appropriate to settle a dispute when settlement of the dispute will be to the best advantage of the state, taking into account all relevant factors, including —

- (a) whether settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;

- (b) whether settlement would be justified in comparison to any possible benefits that may be derived through litigation, bearing in mind —
  - (i) the cost of litigation;
  - (ii) the prospects of success in a court or dispute resolution procedures;
  - (iii) the prospects of collecting any amounts due; and
  - (iv) the costs associated with collection;
- (c) whether there are any complex factual or quantum issues in contention, or any evidentiary difficulties, which will make the case problematic or unsuitable for resolution through litigation;
- (d) whether the matter involves a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, and settlement offers the best prospect of unwinding such tax avoidance arrangements; and
- (e) whether settlement of the dispute will promote compliance with tax legislation by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

(2) Any settlement of a dispute in terms of this Chapter must be fair and equitable to the Commissioner, the other party and the state.

### **Who may settle disputes**

- 831.** (1) A dispute may be settled in terms of this Part on behalf of the state only by –
- (a) the Commissioner; or
  - (b) a SARS official to whom the power to settle disputes on behalf of the state, or to settle that specific dispute, has been delegated by the Commissioner in terms of section **19**.

(2) The Commissioner or an official referred to in subsection (1)(b) may not settle a dispute on behalf of the state if the Commissioner or that official has, or at any stage had, a personal, family, social, business, professional, employment or financial relationship with the other party to the dispute unless that relationship is trivial or irrelevant to the dispute.

### **Formal requirements for settlement**

**832.** (1) A dispute settled in accordance with this Part must be in the form of a written agreement between the parties in a format as may be prescribed by rule.

- (2) The written agreement must –
- (a) set out the agreed position between the parties, including details on—

- (i) how issues at stake in the dispute were settled;
  - (ii) how each of those issues is to be dealt with in future;
  - (iii) any undertakings given by the parties;
  - (iv) the withdrawal of –
    - (aa) any administrative appeal in terms of Part 3 of this Chapter;
    - (bb) any alternative dispute resolution proceedings in terms of Part 5 of this Chapter; or
    - (cc) any judicial proceedings; and
  - (v) any arrangements for payment; and
- (b) be in full and final settlement of those issues.

### **Settlements conditional upon disclosure of facts**

**833.** (1) The parties involved in a dispute must at all times disclose all relevant facts in discussions during the process of settling the dispute.

(2) A settlement is conditional upon full disclosure of all material facts known to the parties at the time of settlement.

- (3) The Commissioner is bound by a settlement unless –
- (a) material facts were not disclosed to the Commissioner; or
  - (b) there was fraud or misrepresentation of the facts.

### **Non-compliance**

**834.** The Commissioner has the right to recover any outstanding amounts in full if the other party to the settlement fails to comply with any agreed payment arrangement.

### **Confidentiality**

**835.** The Commissioner and other SARS officials involved in settling a dispute may not disclose the terms of any settlement otherwise than as provided for in section 21 or 836.

### **Record keeping and reporting**

- 836.** (1) The Commissioner must —
- (a) maintain a register of all disputes settled in accordance with this Part; and
  - (b) fully document the process in terms of which each dispute was settled, which document must be signed by or on behalf of the Commissioner and the other party to the dispute.

(2) The Commissioner must within 90 calendar days after the end of each financial year submit to the Auditor-General and the Minister a summary of all disputes settled during the financial year.

(3) A summary —

- (a) may not, subject to section **21**, disclose the identity of the other parties to the disputes; and
- (b) must contain details of —
  - (i) the number of disputes settled;
  - (ii) the amount of revenue forgone; and
  - (iii) the estimated amount of savings in litigation costs.

### ***Part 5: Alternative dispute resolution***

#### **Purpose of this Part**

**837.** The purpose of this Part is to provide for alternative dispute resolution procedures to resolve disputes between the Commissioner and persons aggrieved by decisions of the Commissioner, customs officers or SARS officials.

#### **Applications for alternative dispute resolution**

**838.** A person aggrieved by a decision taken by the Commissioner, a customs officer or a SARS official, may apply in writing to the Commissioner to have the matter resolved through alternative dispute resolution procedures prescribed in terms of section **841**.

#### **Consideration of applications**

**839.** (1) The Commissioner must consider an application in terms of section **838**, but may refer a matter for alternative dispute resolution only if —

- (a) the applicant was unsuccessful in —
  - (i) a request for reconsideration of the decision in terms of Part **2** of this Chapter; or
  - (ii) an administrative appeal in terms of Part **3** of this Chapter;
- (b) the decision is appropriate for alternative dispute resolution; and
- (c) the decision is not subject to any judicial proceedings or pending judicial proceedings.

(2) The Commissioner may —

- (a) grant an application in terms of section **838**; or
- (b) refuse such an application if —
  - (i) subsection (1) is not complied with; or
  - (ii) alternative dispute resolution is not in the state's interests.

### **Alternative dispute resolution on initiative by Commissioner**

**840.** The Commissioner may despite sections **838** and **839** agree with the other party to a dispute to have the dispute resolved through alternative dispute resolution procedures prescribed in terms of section **841**.

### **Alternative dispute resolution procedures**

**841.** The Minister may, after consultation with the Cabinet member responsible for the administration of justice, make regulations prescribing—

- (a) alternative dispute resolution procedures in terms of which the Commissioner and a person aggrieved by a decision may resolve the matter; and
- (b) categories of decisions which are or are not suitable for alternative dispute resolution.

### **Exclusion of certain days when determining time periods for purposes of this Chapter**

**841A.** The days from 16 December of a year to 15 January of the following year, both dates inclusive, must be excluded when determining a time period for purposes of this Chapter.

## **CHAPTER 37**

### **ADMINISTRATIVE PENALTIES**

#### **Types of administrative penalties**

**842.** There are for purposes of enforcing this Act the following types of administrative penalties:

- (a) fixed amount penalties referred to in section **845**;
- (b) prosecution avoidance penalties referred to in section **846**;
- (c) termination of seizure penalties referred to in section **849**;
- (d) withdrawal of confiscation penalties referred to in section **849**; and
- (e) missing goods penalties referred to in section **850**.

#### ***Part 1: Administrative penalties for breaches of this Act***

#### **Punishment for breaches of this Act**

**843.** If a person commits a breach of this Act, the customs authority may –

- (a) in the case of a non-prosecutable breach, impose a fixed amount penalty for the breach; or
- (b) in the case of a prosecutable breach –
  - (i) impose a prosecution avoidance penalty for the breach; or
  - (ii) institute criminal proceedings for the breach.

### **Fixed amount penalties**

**844.** (1) (a) The Minister must by notice in the Gazette list non-prosecutable breaches of this Act for which fixed amount penalties may be imposed.

(b) A notice in terms of paragraph (a) must list non-prosecutable breaches under different categories as set out in subsection (2).

(2) The fixed amount penalties for the different categories of non-prosecutable breaches of this Act are as follows:

#### **FIXED AMOUNT PENALTIES**

<b>Category of breach</b>	<b>Amount of penalty</b>
Category A	R5 000
Category B	R10 000
Category C	R15 000
Category D	R20 000

(3) If within a period of three years a person commits the same non-prosecutable breach for –

(a) a second time, the amount of the penalty is double the amount indicated for the relevant category in the table; or

(b) a third time or more times the amount of the penalty is three times the amount indicated for the relevant category in the table.

### **Procedure for imposing fixed amount penalties**

**845.** (1) If a person commits a non-prosecutable breach of this Act, the customs authority may by notice to that person impose the appropriate fixed amount penalty for the breach in accordance with section **844**.

(2) A penalty imposed in terms of subsection (1) must be paid to the Commissioner within five working days of the date of issue of the notice, or such extended period as may be granted in terms of section **875**.

### **Prosecution avoidance penalties**

**846.** (1) A prosecution avoidance penalty may, instead of a criminal prosecution, be imposed on a person who becomes liable to prosecution for any prosecutable breach of this Act.



- (2) Subsection (1) may not be applied to a person who on –
- (a) two separate occasions paid a prosecution avoidance penalty for a Category 1 offence and within a period of five years from the date of payment of the penalty on the first occasion again becomes liable to prosecution for a Category 1 offence;
  - (b) three separate occasions paid a prosecution avoidance penalty for a Category 2 offence and within a period of five years from the date of payment of the penalty on the first occasion again becomes liable to prosecution for a Category 2 offence; or
  - (c) three separate occasions paid a prosecution avoidance penalty for any offence in terms of this Act and within a period of five years from the date of payment of the penalty on the first occasion again becomes liable to prosecution for an offence in terms of this Act.

### **Procedure for imposing prosecution avoidance penalties**

**847.** (1) If a person is liable to prosecution for a prosecutable breach of this Act, the customs authority may, subject to section **846**(2), issue to that person a notice informing that person of the alleged breach and that prosecution can be avoided if that person elects to have the matter summarily settled by the customs authority by paying a prosecution avoidance penalty to the Commissioner within five working days of the date of issue of the notice.

(2) The amount of a prosecution avoidance penalty imposed in terms of subsection (1) –

- (a) must be determined in accordance with any limits as may be set by the Commissioner; and
- (b) may not exceed the maximum fine a court may impose upon conviction of a person for the relevant breach.

(3) Payment of a prosecution avoidance penalty in terms of this section –

- (a) does not amount to a conviction of the person paying the penalty in respect of the relevant breach; and
- (b) indemnifies the person from prosecution for that breach.

### **Effect of detention, seizure or confiscation of goods on application of this Part**

**848.** The detention, seizure or confiscation of goods in terms of this Act does not prevent the application of this Part in relation to breaches of this Act committed in respect of those goods.

## ***Part 2: Other administrative penalties***

### **Termination of seizure and withdrawal of confiscation penalties**

**849.** (1) If the customs authority approves an application in terms of **746** to terminate a seizure or in terms of section **749** to withdraw a confiscation of goods, the customs authority may as a condition for the approval of the application require the applicant to pay an administrative penalty not exceeding the customs value of the goods.

(2) A penalty imposed in terms of subsection (1) must be paid to the Commissioner within five working days after the applicant was notified of the approval, or such extended period as may be granted in terms of section **875**.

### **Missing goods penalties for goods to be confiscated**

**850.** (1) If goods that are liable to confiscation are to be seized in terms of section **743** and the goods cannot readily be found, the customs authority may, in lieu of the goods, by notice to any one or more of the following persons impose a missing goods penalty equal to the customs value of the goods:

- (a) the person in whose possession the goods were or on reasonable grounds believed to have been immediately before the decision to seize the goods;
- (b) the importer or exporter of the goods or, if the importer or exporter is not located in the Republic, the agent in the Republic of the importer or exporter; or
- (c) the person who was the owner of the goods at the time of the decision to seize the goods or, if the owner is not located in the Republic, the agent in the Republic of the owner.

(2) A penalty imposed in terms of subsection (1) must be paid to the Commissioner within five working days of the date of issue of the notice, or such extended period as may be granted in terms of section **875**.

## ***Part 3: General matters***

### **Applicability of Chapter 36 proceedings<sup>415</sup>**

**851.** (1) The proceedings provided for in Chapter **36**, as may be appropriate in the circumstances, apply in respect of –

- (a) the imposition of an administrative penalty; or
- (b) the amount of the penalty.

(2) Only the amount of a prosecution avoidance penalty and not the imposition of the penalty is subject to proceedings in terms of Part **3**, **4** or **5** of Chapter **36**.<sup>416</sup>

<sup>415</sup> None of the proceedings referred to in Chapter **36** affects or suspends the obligation to pay an administrative penalty. See section **811**.

<sup>416</sup> The imposition of a prosecution avoidance penalty cannot be subject to appeal as the person paying the

**Rules to facilitate implementation of this Chapter**

**852.** Rules made in terms of section **870** to facilitate the implementation of this Chapter may include rules prescribing –

- (a) the format of a notice referred to in section **845(1)**, **847(1)** or **850(1)** and the information which such a notice must contain;
- (b) .....

**Offences in terms of this Chapter**

**853.** A person is guilty of an offence if that person has repeatedly for at least five times within a calendar year been penalised in terms of section **845** for the same type of non-prosecutable breach of this Act and that person thereafter again commits a breach of the same type within the same calendar year.

**CHAPTER 38**

**JUDICIAL MATTERS**

***Part 1: Offences<sup>417</sup> and penalties***

**Categories of offences in terms of this Act**

**854.** (1) An offence in terms of this Act must be classified as a Category 2 offence unless expressly stated that it is a Category 1 offence.

(2) An offence classified in terms of subsection (1) as a Category 2 offence, becomes a Category 1 offence despite that subsection if it is proved that the offence was committed to evade tax.

**General Category 1 offences**

**855.** (1) A person is guilty of a Category 1 offence if that person –

- (a) makes a false statement or provides false or misleading information or omits to state with the intention to mislead information in any document that must –
  - (i) be submitted to the Commissioner or the customs authority in compliance with a requirement of this Act; or
  - (ii) be kept or retained in terms of a requirement of this Act;
- (b) submits to the Commissioner or the customs authority or produce to a customs officer a document which –

penalty did so because of own choice.  
<sup>417</sup> For criminal proceedings against corporate bodies or associations of persons other than corporate bodies, see section 332 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

- (i) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true; or
  - (ii) states, or omits to state, information which is stated or omitted with the intention to mislead;
- (c) makes use of a document to comply with a requirement of this Act which –
- (i) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true; or
  - (ii) states, or omits to state, information which is stated or omitted with the intention to mislead;
- (d) makes a false statement or provides false or misleading information when questioned by, or complying with a request of, a customs officer;
- (e) proposes to a customs officer, or gives or promises to give any reward to a customs officer, whether directly or through a third party –
- (i) to refrain from doing something which that officer must or may do in terms of this Act or a tax levying Act; or
  - (ii) to induce that customs officer to do something which the customs officer may do or may not do in terms of this Act or a tax levying Act;
- (f) conspires with a customs officer to do or permit anything in breach of this Act;
- (g) without lawful excuse, brings into the Republic, produces, has in possession or makes available to another person –
- (i) any blank or incomplete invoice or any billhead or other similar document capable of being completed and used as an invoice for imported goods; or
  - (ii) any stamp the imprint of which depicts the name of a company, firm or other business entity in the Republic or a foreign country, or any signs or letters which could be reasonably understood to be a reference to such company, firm or business entity;
- (h) without lawful excuse, uses, controls, has in possession or makes available to another person –
- (i) any official stamp used on authority of the Commissioner for purposes of this Act or a tax levying Act;
  - (ii) any other stamp the imprint of which is identical to or resembles the imprint of an official stamp referred to in subparagraph (i); or
  - (iii) a stamp used by a government authority in a foreign country for purposes of customs control or the import or export of goods;
- (i) without lawful excuse, removes, breaks, damages or interferes or tampers with any lock, meter, gauge, rod, seal, mark or fastening placed on or fitted to any warehouse, building, enclosure or other facility, any vessel, aircraft, railway carriage or vehicle, or any container, package or other article, or any goods, in terms of this Act;

- (j) conceals, disposes of, processes, damages or destroys any goods to prevent the goods from being detected by the customs authority or to prevent the detention, seizure or confiscation of the goods in terms of this Act;
- (k) diverts for home use –
  - (i) goods imported into the Republic –
    - (aa) that have not been cleared for home use or a customs procedure;  
or
    - (bb) that have been cleared for home use but not released for home use; or
  - (ii) goods under a customs procedure,<sup>418</sup> including compensating products under the inward or outward processing procedure;
- (l) conceals diverted goods;
- (m) buys, acquires or receives diverted goods from another without reasonable cause for believing that the goods are in free circulation; or
- (n) makes an arrangement with a person who supplies, produces, processes or sells goods, or with an agent of any such person or through an intermediary, with the object of defeating or evading a provision of this Act in relation to a quantity of such goods imported or to be imported into, or exported or to be exported from, the Republic; or
- (o) attempts to commit or assists in committing an act which is a Category 1 offence in terms of this section or any other section of this Act.

(2) Proof that a person charged with the commission of an offence referred to in subsection (1)(m) purchased, acquired or received from another person the goods which are the subject of the charge and that those goods are diverted goods, is, in the absence of evidence to the contrary which raises a reasonable doubt, sufficient evidence of the absence of reasonable cause.

(3) For purposes of subsection (1)(l) or (m) or (2) “**diverted goods**” means goods referred to in subsection (1)(k)(i) or (ii) that have been diverted for home use, but does not include goods which after their diversion have been detained, seized or confiscated in terms of this Act or disposed of in accordance with any applicable legislation.

### **General Category 2 offences**

**856.** A person is guilty of a Category 2 offence if that person –

<sup>418</sup> Goods come under a customs procedure when cleared for that customs procedure. See provisions on commencement of customs procedures in Chapters dealing with each customs procedure.

- (a) fails to comply with a request or direction of the customs authority or of a customs officer in terms of this Act;
- (b) pretends to be a customs officer, or the interpreter or assistant of, or any other person accompanying, a customs officer;
- (c) hinders or interferes with a customs officer in the execution of that officer's official duties;
- (d) performs an act without the authorisation, permission or approval of the customs authority if such act may in terms of this Act only be performed on authority of such authorisation, permission or approval;
- (e) contravenes or fails to comply with a condition subject to which any release, authorisation, permission, approval, exemption or recognition was granted by the customs authority in terms of this Act; or
- (f) attempts to commit or assists in committing an act which is a Category 2 offence in terms of this section or any other section of this Act.

#### **Offences committed at places of entry or exit outside Republic**

**857.** (1) A person is guilty of an offence if that person at a place outside the Republic designated in terms of sections **31** and **34** to be a place of entry or exit for the Republic, commits an act which would have constituted an offence in terms of this Act had that act been committed at a place of entry or exit inside the Republic.

(2) A person charged with an offence in terms of subsection (1) may be prosecuted for that offence in any court having jurisdiction at the place where the accused happens to be in the Republic.

#### **Penalties for Category 1 offences**

**858.** (1) A person convicted of a Category 1 offence in terms of this Act is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R1 000 000 or a higher amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment.

(2) If a person convicted for an offence referred to in section **855**(1) is at any time within five years of the date of conviction again convicted for an offence referred to in that section, the court must consider the imposition of a period of imprisonment not exceeding the period referred to in subsection (1) without the option of a fine or both such imprisonment and a fine referred to in that subsection.

(3) This section does not affect the application of section **850**.

### **Additional punitive powers of courts in criminal proceedings**

**859.** A court convicting a person for an offence referred to in section **855(1)(a), (b), (c), (f), (g), (h), (j), (l) or (m)** may –

- (a) summarily inquire into any benefit the convicted person gained by committing the offence;
- (b) determine the monetary value of that benefit, and
- (c) in addition to any other penalty imposed on that person for the commission of that offence, impose a fine on that person not exceeding three times the amount of the monetary value of that benefit.

### **Penalties for Category 2 offences**

**860.** A person convicted of a Category 2 offence in terms of this Act is liable to imprisonment for a period not exceeding three years or to a fine not exceeding R500 000 or a higher amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment.

### **Liability of registered agents and persons managing juristic entities**

**861.** (1) If an importer, exporter, carrier or other person not located in the Republic commits an act (including an omission to perform an act) which is an offence in terms of this Act, the registered agent in the Republic of that importer, exporter, carrier or other person is guilty of an offence if that agent –

- (a) knew or should reasonably have known that the importer, exporter, carrier or other person is to commit that act and failed to take reasonable steps to prevent that importer, exporter, carrier or other person from committing that act; or
- (b) when becoming aware of that act, failed to notify the customs authority of the commission of that act.

(2) If a juristic entity commits an act (including an omission to perform an act) which is an offence in terms of this Act, a person who is a director, administrator or trustee of that entity is guilty of an offence if that person –

- (a) knew or should reasonably have known that the entity is to commit that act and failed to take reasonable steps to prevent the entity from committing that act; or
- (b) when becoming aware of that act, failed to notify the customs authority of the commission of that act.

(3) An offence in terms of subsection (1) or (2) is –

- (a) a Category 1 offence if the offence committed by the importer, exporter, carrier or other person, or the juristic entity, is a Category 1 offence; or
- (a) a Category 2 offence if the offence committed by the importer, exporter, carrier or other person, or the juristic entity, is a Category 2 offence.

(4) If a juristic entity is liable to prosecution for a breach of this Act which is an offence in terms of this Act, any person who, at the time of the commission of that breach, was a director, administrator or trustee of that juristic entity, or an employee of that entity in a managerial position, or managing any premises or business in or in connection with which that breach was committed, is in addition to the entity liable to prosecution for that breach –

- (a) if that person was a party to the breach; or
- (b) if that person was not a party to the breach, failed to take reasonable steps within his or her powers when becoming aware of the breach, to prevent the entity from committing the breach.

## ***Part 2: Other judicial matters***

### **Civil actions arising from this Act**

**862.** (1) The Commissioner may institute any civil actions necessary for enforcing or implementing this Act, including claims for amounts owing in terms of this Act.<sup>419</sup>

(2) The Commissioner must be cited as defendant or respondent in any civil actions against the state, including SARS and the customs authority, which arises from the enforcement or implementation of this Act.

### **Advance notice of judicial proceedings against Minister, Commissioner, customs authority, customs officers, SARS officials or the state**

**863.** (1) No process by which any judicial proceedings are instituted against the Minister, the Commissioner, SARS, the customs authority, a customs officer, a SARS official or the state on a cause of action arising from the enforcement or implementation of this Act or the Customs Duty Act may be served before the expiry of a period of 30 calendar days after delivery of a notice in writing setting forth clearly and explicitly –

- (a) the cause of action;
- (b) the name and place of abode of the person who is to institute the proceedings; and
- (c) the name and address of that person's attorney or agent, if any.

(2) (a) The notice referred to in subsection (1) must be in the form and be delivered in the manner and at the places as may be prescribed by rule.

<sup>419</sup> The Prescription Act determines the period within which civil actions for amounts owing must be instituted.



(b) No notice is valid unless it complies with the requirements prescribed in this section and the rules.

(3) The Minister, the Commissioner, SARS, the customs authority, a customs officer or a SARS official against whom the proceedings are to be instituted –

(a) may by agreement with the person who is to institute the proceedings shorten the 30 calendar days' period referred to in subsection (1); or

(b) must shorten that period if a court so orders.

(4) A court may, when the interests of justice so requires –

(a) exempt an applicant from any or all of the notice requirements in this section; or

(b) shorten the 30 calendar days' period referred to in subsection (1).

**Limitation of period for institution of judicial proceedings against Minister, Commissioner, SARS, customs authority, customs officers, SARS officials or the state**

**864.** (1) Process by which any judicial proceedings are instituted against the Minister, the Commissioner, SARS, the customs authority, a customs officer, a SARS official or the state on a cause of action arising from the enforcement or implementation of this Act or the Customs Duty Act must be served before the expiry of a period of one year –

(a) if the matter was not the subject of administrative proceedings provided for in Part 2, 3, 4 or 5 of Chapter 36, from the date on which the cause of action arose;

(b) if the aggrieved person has submitted a request or application to have the matter resolved through any such administrative proceedings and the request or application was refused, from the date on which the aggrieved person was informed of the refusal;

(c) if the matter was the subject of any such administrative proceedings but the aggrieved person withdrew from the proceedings before a final outcome was reached, from the date on which the aggrieved person withdrew from the proceedings; or

(d) if the matter was the subject of any such administrative proceedings in which a final outcome was reached, from the date on which the aggrieved person was informed of the final outcome of the proceedings.

(2) The Minister, the Commissioner, SARS, the customs authority, a customs officer or a SARS official against whom the proceedings are to be instituted –

(a) may by agreement with the person who is to institute the proceedings extend the one year period referred to in subsection (1); or

(b) must extend that period if a court so orders.

### **Notification of applications for orders under Admiralty Jurisdiction Regulation Act**

**865.** Notwithstanding the provisions of the Admiralty Jurisdiction Regulation Act, 1983 (Act No.105), when any person applies to the High Court for an order for the sale of any arrested property, such person must deliver a notice of such an application at the place prescribed in the rules.

### **Admissibility of certain statements in documents**

**866.** In any criminal or civil proceedings arising from the application of this Act, a statement in any record, letter or other document submitted, kept or received by or on behalf of any person to the effect that goods of a particular price, value (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate or other information which relates to such goods and has a bearing on such price or value), quantity, quality, nature, strength or other characteristic have been produced, imported, ordered, supplied, purchased, sold, dealt with, traded in or held in stock by that person, is admissible as evidence against that person that that person has produced, imported, ordered, supplied, purchased, sold, dealt with, traded in or held in stock goods of that price, value, quantity, quality, nature, strength or other characteristic.

### **Jurisdiction of magistrate's court**

**867.** (1) A magistrate's court has jurisdiction to hear and decide any criminal action against a person for an offence in terms of this Act and to impose any penalty determined for such offence.

(2) A magistrate's court has jurisdiction to hear and decide any civil action instituted by the Commissioner against a person for the payment of any money owed by that person to the Commissioner in terms of this Act<sup>420</sup>.

### **Publication of names of offenders**

**868.** (1) The Commissioner may bi-annually publish for general information a list of the names of persons –

- (a) convicted in a final judgement of a Category 1 offence;
- (b) who paid a prosecution avoidance penalty of R500 000 or more in respect of a Category 1 offence; or
- (c) convicted in a final judgement of an offence in terms of a tax levying Act which involved –
  - (i) the evasion of tax on imported or exported goods; or

<sup>420</sup> Section does not mean that only the magistrate's court can hear cases for the recovery of amounts owed to the Commissioner.

(ii) any other fraudulent or dishonest behaviour in relation to imported or exported goods.

(2) The publication may in addition to the names of offenders specify –

- (a) particulars of the offence; and
- (b) particulars of the fine or sentence, or penalty, imposed.

(3) A person's name must remain on the list for a period of five years.

(4) A court convicting a person for an offence in terms of this Act or a tax levying Act may for purposes of sentencing take judicial notice of any particulars appearing on the list in respect of that person.

## **CHAPTER 39**

### **MISCELLANEOUS MATTERS**

#### **Regulations**

**869.** (1) The Minister may make regulations prescribing any matter that may be prescribed by regulation in terms of this Act.

#### **Rules**

**870.** (1) The Commissioner may make rules to facilitate the implementation of this Act or any Chapter, Part or other provision of this Act, including rules prescribing—

- (a) any matter that may be prescribed by rule in terms of this Act;
- (b) the communicative systems administered by SARS for the implementation of this Act, including the conditions and requirements for electronic communication with the Commissioner;
- (c) the contents of any report, notice, notification or other document that must be submitted to the Commissioner, the customs authority or a customs officer in terms of a provision of this Act;
- (d) the manner in which and the persons by whom such reports, notices, notifications or other documents must be submitted, and the persons who must submit any such reports, notices, notifications or other documents electronically;
- (e) the combination or simultaneous submission of such reports, notices, notifications or other documents;
- (f) the circumstances in, and the conditions on, which any such reports, notices, notifications or other documents may be amended, and procedures for the amendment of any such reports, notices, notifications or other documents;

- (g) the records that persons to whom this Act applies must keep for the purposes of this Act and the manner in which, the period for which and the place at which those records must be kept, subject to section **884**;
- (h) the returns persons to whom this Act applies must submit to the customs authority and the manner in which and the periods for which those returns must be submitted;
- (i) the manner and time in which applications may be made for authorisations, permissions, approvals, exemptions or recognitions that may be granted by the customs authority in terms of a provision of this Act;
- (j) the particulars such authorisations, permissions, approvals, exemptions or recognitions must contain and any conditions subject to which such authorisations, permissions, approvals or exemptions are issued;
- (k) the contents of any registration certificate, licence or certificate of accreditation;
- (l) the sizes and types of containers in which specific goods, including cigarettes, may be imported into the Republic, and the distinguishing marks or impressions that must appear on the containers of such goods;
- (m) the application of the materiality principle in relation to this Act, including criteria for determining when an interest in goods is to be regarded as material or beneficial for the purposes of this Act;
- (n) the criteria for determining whether a vessel, aircraft or vehicle is a small vessel, light aircraft or vehicle used as a private means of transport;
- (o) alternative methods for the submission of documents to the customs authority in the event of a breakdown in electronic communication; and
- (p) criminal sanctions for a contravention of or non-compliance with a provision the rules.

(2) A rule in terms of this section may –

- (a) differentiate between different –
  - (i) categories of persons to which this Act applies;
  - (ii) categories of goods;
  - (iii) categories of vessels, aircraft, trains, railway carriages or vehicles;
  - (iv) modes of transport;
  - (v) places of entry or exit or categories of places of entry or exit;
  - (vi) customs controlled areas or categories of customs controlled areas;
  - (vii) matters to which this Act applies; or
  - (viii) categories of customs officers; or
- (b) be limited in its application to a particular—
  - (i) category of persons to which this Act applies;
  - (ii) category of goods;
  - (iii) category of vessels, aircraft, trains, railway carriages or vehicles;

- (iv) mode of transport;
- (v) place of entry and exit;
- (vi) customs controlled areas or categories of customs controlled areas;
- (vii) matter to which this Act applies; or
- (viii) category of customs officers.

### **Consultative processes before promulgation of rules**

**871.** (1) Before rules in terms of section **870** are promulgated, the Commissioner must publish the draft rules in the *Government Gazette* for public comment.

- (2) Rules made in terms of section **870** must be submitted to –
  - (a) the Minister; and
  - (b) Parliament for parliamentary scrutiny.

### **Guidelines**

**872.** (1) The Commissioner may publish in a manner determined by the Commissioner guidelines to facilitate the implementation of this Act and the tax levying Acts.

- (2) A guideline published in terms of subsection (1) has no binding legal effect.

### **Form or format of documents**

**873.** Where this Act states that the form or format of a document must or may be prescribed by rule, the Commissioner may instead of prescribing the form or format of that document by rule published in the *Government Gazette*, prescribe the form or format of that document by publishing it on the SARS website.

### **Departures from, and condonation of non-compliance with, rules, conditions and requirements**

**874.** (1) The Commissioner may on good grounds shown approve a departure from –

- (a) a rule made in terms of section **870**; or
- (b) any condition or requirement imposed by the customs authority in terms of this Act.

- (2) The Commissioner may on good grounds shown condone –
  - (a) any non-compliance with –
    - (i) a rule made in terms of section **870**; or
    - (ii) a condition or requirement imposed by the customs authority in terms of this Act; or

- (b) any deficiency in information required on any form or other document submitted by a person in terms of this Act.

### **Extension of timeframes**

**875.** (1) The customs authority may on good grounds shown extend any timeframe specified in this Act as a timeframe –

- (a) within which something must or may be done; or
- (b) for which something is or may be allowed.

(2) An extension of a timeframe may be granted in terms of subsection (1) –

- (a) to specific person or category of persons; or
- (b) in relation to –
  - (i) a specific vessel, aircraft, train or vehicle or category of vessels aircraft, trains or vehicles;
  - (ii) a specific consignment of goods;
  - (iii) consignments of the same kind of goods imported, to be exported, loaded, off-loaded, handled, stored or in any other way dealt with –
    - (aa) by the same person during a specific period; or
    - (bb) at any specific premises during a specific period;
  - (iv) goods of a specific kind imported, to be exported, loaded, off-loaded, handled, stored or in any other way dealt with during a specific period;
  - (v) goods loaded, off-loaded, handled, stored or in any other way dealt with at any specific premises; or
  - (vi) a specific category of goods or cargo.

(3) Subsection (1) may not be applied to extend a period –

- (a) within which a person may apply for a refund;
- (b) within which the Commissioner, the customs authority or a customs officer is required in terms of a provision of this Act to perform a specific act;
- (c) referred to in section .... or section .....of the Customs Duty Act; or
- (d) within which an action prescribes in terms of the Prescription Act.

(4) Subsection (1) must be applied subject to any specific limitation in terms of a provision of this Act placed on the extension of a time period referred to in such provision.

### **Shortening of minimum time periods**

**876.** (1) The customs authority may on good grounds shown shorten any minimum time period specified in this Act as a period before which something must or may be done or may not be done.

(2) A shortening of a minimum time period may be granted in terms of subsection (1) –

(a) to specific person or category of persons; or

(b) in relation to –

(i) a specific vessel, aircraft, train or vehicle or category of vessels aircraft, trains or vehicles;

(ii) a specific consignment of goods;

(iii) consignments of the same kind of goods imported, to be exported, loaded, off-loaded, handled, stored or in any other way dealt with –

(aa) by the same person during a specific period; or

(bb) at any specific premises during a specific period;

(iv) goods of a specific kind imported, to be exported, loaded, off-loaded, handled, stored or in any other way dealt with during a specific period; or

(v) goods loaded, off-loaded, handled, stored or in any other way dealt with at any specific premises.

(3) Subsection (1) may not be applied to shorten a minimum time period which must expire before which the Commissioner, the customs authority or a customs officer may in terms of a provision of this Act to perform a specific act.

### **Sworn or solemn declarations**

**877.** When in terms of this Act a person is required to submit to the customs authority a declaration, report, statement, return or other document setting out facts or other information, a customs officer may require the person submitting the document to verify the truth of the document by way of a sworn or solemn declaration.

### **Methods of conveying or sending decisions and documents**

**878.** (1) The Commissioner, the customs authority or a customs officer may convey any decision taken or send any document issued in terms of this Act, including any exemption, authorisation, permission, approval, notice, certificate, recognition, direction, condition or refusal, to a person affected by that decision or to whom the document is issued either by –

(a) delivering the decision or document by hand;

(b) sending the decision or document by post;

- (c) telefaxing the decision or document, if that person is equipped to receive telefax messages; or
- (d) transmitting the decision or document electronically, if that person is registered as an electronic user.

(2) When in terms of this Act a person is required or permitted to submit to the Commissioner, the customs authority, a customs officer or any other person a declaration, application, request, report, statement, return, notice or other document, the document may be submitted by –

- (a) delivering the document by hand;
- (b) sending the document by post;
- (c) telefaxing the document, subject to section **880**; or
- (d) transmitting the document electronically, subject to sections **595** and **879**.

(3) Subsection (1) or (2) does not apply if this Act requires that the decision or document must be conveyed, sent or submitted in a specific way.

#### **Electronic submission of documents or communications<sup>421</sup>**

**879.** (1) When in terms of this Act a person is required or permitted to submit to the Commissioner, the customs authority or a customs officer a declaration, report, statement, return, notice, application, request or other document or communication electronically, the document or communication must be submitted –

- (a) to the electronic address of the Commissioner; and
- (b) in a specific electronic format as may be prescribed by rule.

(2) When in terms of this Act a person is required to sign any declaration, report, statement, return, notice, application, request or other document or communication and that document or communication is submitted electronically, it must be electronically signed in the manner prescribed by rule.

(3) When in terms of this Act a person is required to submit to the Commissioner, the customs authority or a customs officer a declaration, report, statement, return, notice, application, request or other document or communication electronically or in a specific electronic format –

- (a) the declaration, report, statement, return, notice, application, request or other document or communication may in the event of a communications breakdown be

<sup>421</sup> A person must be registered as an electronic user to communicate with customs electronically. See section **595**.



submitted in paper format within such period and at such place as the customs authority may determine; or

- (b) the customs authority may in any other circumstances –
  - (i) condone any inability by a person to submit the declaration, report, statement, return, notice, application, request or other document or communication electronically or in that specific electronic format; and
  - (ii) accept the declaration, report, statement, return, notice, application, request or other document or communication in paper format within such period and at such place as the customs authority may determine.

(4) For purposes of this Act the electronic submission of a document or communication does not include the submission of a document or communication by telefax or by cellular phone message.

#### **Submission of documents or communications by telefax**

**880.** When in terms of this Act a person is permitted to submit a declaration, report, statement, return, application, request or other document or communication to the customs authority by telefaxing the document or communication, the original document or communication must be handed in at or sent by registered post to the relevant Customs Office within five days of the date on which it was telefaxed.

#### **Documents submitted and oaths and affirmations made outside Republic**

**881.** (1) If a declaration, report, statement, return, application, request or other document which may or must be submitted in terms of this Act is submitted or presented in accordance with this Act to a customs officer of the Republic outside the Republic, that declaration, report, statement, return, application, request or other document is for the purposes of this Act as effectual and binding as if submitted in the Republic.

(2) If an oath or affirmation which may or must be made in terms of this Act is made in accordance with this Act to or before a customs officer of the Republic outside the Republic, that oath or affirmation is for the purposes of this Act as effectual and binding as if submitted or made in the Republic.

#### **Factors to be taken into account when considering exemptions, authorisations, permissions, approvals and recognitions**

**882.** (1) Where this Act confers a power on the Commissioner, the customs authority or a customs officer to grant an exemption, authorisation, permission, approval or recognition to a person in terms of this Act, the Commissioner, customs authority or customs officer

must, when considering the granting of the exemption, authorisation, permission, approval or recognition, take into account all relevant factors, including –

- (a) those specifically stipulated in the provisions regulating the granting of the exemption, authorisation, permission, approval or recognition;
- (b) the context in, and purpose for, which the exemption, authorisation, permission, approval or recognition is given;
- (c) the ease with which a provision of this Act can be evaded if the exemption, authorisation, permission, approval or recognition is given;
- (d) any risks in relation to the payment or recovery of any tax or other money owed to the Commissioner that may be created by the granting of the exemption, authorisation, permission, approval or recognition;
- (e) any motivations submitted by the person seeking the exemption, authorisation, permission, approval or recognition;
- (f) any motivations by a person objecting to the granting of the exemption, authorisation, permission, approval or recognition, if their rights will be affected by the granting of the exemption, authorisation, permission, approval or recognition;
- (g) whether the person seeking the exemption, authorisation, permission, approval or recognition –
  - (i) has a record of non-compliance with this Act or a tax levying Act;
  - (ii) has been convicted of an offence under this Act or a tax levying Act; or
  - (iii) has been convicted of an offence involving fraud or dishonesty during the five years preceding the application;
- (h) whether the tax matters of the person seeking the exemption, authorisation, permission, approval or recognition are in order as contemplated in section **882A**;  
and
- (i) any other matter as may be prescribed by rule.

(2) Subsection (1) does not apply to the consideration of applications for Registration, licenses or accreditation, or the withdrawal or suspension of registration, licenses or accreditation, or the imposition or withdrawal of license, registration or accreditation conditions, and those matters must be disposed of in accordance with Chapters **27**, **28** and **29**, respectively.

#### **When tax matters are in order for purposes of this Act**

**882A.** A person's tax matters are considered to be in order for purposes of this Act when –

- (a) there are no outstanding taxes, interest, penalties or other amounts owing to SARS for which that person is liable in terms of this Act, a tax levying Act or any other tax law;

- (b) there are no outstanding tax returns or other documents that must be submitted for tax purposes to SARS in terms of this Act, a tax levying Act or any other tax law;
- (c) there is no pending or on-going tax audit, inquiry or investigation into that person's affairs for purposes of this Act, a tax levying Act or any other tax law.

### **Exemptions, authorisations, permissions, approvals, recognitions and directions**

**883.** (1) (a) Where this Act confers a power on the Commissioner, the customs authority or a customs officer to grant an exemption, authorisation, permission, approval or recognition, or to issue a direction, or to allow an act to be carried out, that power includes the power to grant the exemption, authorisation, permission, approval or recognition, or to issue the direction, or to allow the carrying out of such act, on such conditions or for such period as the Commissioner, the customs authority or customs officer may determine.

(b) A condition and a period determined in terms of paragraph (a) must be consistent with this Act and any applicable tax levying Act.

(2) (a) Where this Act provides that an act may be carried out only on authority of an exemption, authorisation, permission, approval or recognition granted by the Commissioner, the customs authority or a customs officer, no such exemption, authorisation, permission or approval may be granted to regularise an act that has already been carried out.

(b) Paragraph (a) does not affect the application of section **719**.

### **Computerised recordkeeping systems**

**884.** When a provision of this Act requires a person to keep a record in any specific manner, the customs authority may allow that person to deviate from the prescribed requirement and to use any appropriate computerised system for recordkeeping purposes, subject to such conditions or requirements as the customs authority may determine.

### **Applications and requests in terms of this Act**

**885.** When in terms of this Act a person is entitled to submit an application or request in terms of this Act to the Commissioner, the customs authority or a customs officer, that person may submit the application or request either personally or through a representative.

### **Information on SARS website admissible as evidence**

**886.** A printout of any information downloaded from the SARS website may be used as evidence in any legal proceedings.

### **Publication of international agreements to which Republic is party**

**887.** An international agreement to which Republic is a party is enacted into law in the Republic by publication of the agreement in the *Government Gazette*.

### **Liability for damage or loss**

**888.** The state, the Commissioner, a customs officer or a person referred to in section 12(3) is not liable in respect of any damage or loss arising from any decisions taken or actions performed in good faith in the exercise of a power or duty assigned or delegated to the Commissioner, the customs authority, a customs officer or such person in terms of this Act.

### **Legal status of footnotes**

**889.** (1) Footnotes in this Act do not form part of the text of this Act and have no binding legal force.

(2) The Minister may in order to enhance accessibility to this Act, by notice in the Gazette –

- (a) repeal or amend any of the footnotes; or
- (b) add new footnotes.

### **Interpretive notes**

**890.** (1) The Commissioner may for the purpose of facilitating understanding of this Act or a tax levying Act compile and make public in any manner determined by the Commissioner interpretive notes on the interpretation of provisions of this Act or a tax levying Act.

(2) Interpretive notes made public in terms of subsection (1) have no legal effect and do not bind the Commissioner or any other person.

### **Repeal of legislation and savings**

**891.** (1) The legislation referred to in the table in the Schedule is hereby repealed to the extent indicated in the third column of the table, subject to subsection (2).

(2) (a) Despite the repeal of the Customs and Excise Act, 1964 (Act No. 91 of 1964), that Act continues to be applicable to the extent necessary for the imposition, administration, payment and recovery of excise duties, air travellers tax and environmental duties.

(b) The Customs and Excise Act, 1964, to the extent that it continues to be applicable in terms of paragraph (a) must for purposes of this Act be regarded to be a tax levying Act in relation to excise duties, air travellers tax and environmental duties.

(c) Until the Excise Duty Act is enacted any reference in this Act to the Excise Duty Act must be read as a reference to the Customs and Excise Act, 1964.

**Additional transitional provisions**

**892.** .....

**Transitional provisions**

**893.** (1) The registration of an importer or exporter in terms of the Customs and Excise Act continues to be in force for purposes of this Act and a tax levying Act until replaced by a registration in terms of this Chapter, provided the importer or exporter within 30 calendar days from the date on which this Chapter takes effect applies for registration as an importer or exporter in terms of this Chapter.

(2) Any security provided by an importer or exporter to the Commissioner in respect of that person's registration in terms of the Customs and Excise Act, may be utilised by the Commissioner as if the security was provided in respect of that person's registration in terms of this Chapter, but does not preclude the Commissioner from requiring new or additional security in terms of Chapter 30.

**Commencement of Chapter 21**

**894.** The provisions of the Customs and Excise Act, 1964, regulating customs control of international postal articles remain applicable until 21 Chapter takes effect on the date determined in terms of section 897(2).

**Accredited status granted in terms of Customs and Excise Act, 1964**

**895.** Any accredited status granted to a person in terms of Customs and Excise Act lapses when this Act takes effect except that any second level accredited status granted to a person in terms of section 64E of that Act must be regarded to be accredited status granted in terms of this Act.

**Transitional provision**

**896.** Any appeal or other dispute resolution process initiated in terms of the Customs and Excise Act, 1964, and which is not completed when this Act takes effect, must despite the repeal of that Act by this Act be continued and completed in terms of that Act as if that Act had not been repealed.

**Short title and commencement**

**897.** (1) This Act is called the Customs Control Act, 2010, and takes effect on a date determined by the Minister by notice in the Gazette.

(2) Chapter **21** does not take effect on the date referred to in subsection (1) but on a separate date determined by the Minister by notice in the Gazette.

**SCHEDULE**  
**REPEAL OF LEGISLATION**

<b>Number and year</b>	<b>Title of Act</b>	<b>Extent of repeal</b>
Act No. 91 of 1964	Customs and Excise Act	The whole
Act No. 95 of 1965	Customs and Excise Amendment Act	The whole.
Act No. 57 of 1966	Customs and Excise Amendment Act	Sections 1(1), 2 to 16.
Act No. 96 of 1967	Customs and Excise Amendment Act	Section 1 and 2.
Act No. 85 of 1968	Customs and Excise Amendment Act	The whole.
Act No. 105 of 1969	Customs and Excise Amendment Act	Sections 1 to 38 and 40.
Act No. 98 of 1970	Customs and Excise Amendment Act	The whole.
Act No. 89 of 1971	Customs and Excise Amendment Act	The whole.
Act No. 103 of 1972	Customs and Excise Amendment Act	The whole.
Act No. 68 of 1973	Customs and Excise Amendment Act	The whole.
Act No. 7 of 1974	Customs and Excise Amendment Act	The whole.
Act No. 33 of 1974	Parliamentary Service Act	Section 19.
Act No. 64 of 1974	Second Customs and Excise Amendment Act	The whole.
Act No. 71 of 1975	Customs and Excise Amendment Act	The whole.
Act No. 105 of 1976	Customs and Excise Amendment Act	The whole.
Act No. 12 of 1977	Customs and Excise Amendment Act	The whole
Act No. 112 of 1977	Second Customs and Excise Amendment Act	The whole.
Act No. 93 of 1978	Customs and Excise Amendment Act	The whole.
Act No. 110 of 1979	Customs and Excise Amendment Act	The whole.
Act No. 98 of 1980	Customs and Excise Amendment Act	The whole.
Act No. 114 of 1981	Customs and Excise Amendment Act	The whole.
Act No. 86 of 1982	Customs and Excise Amendment Act	The whole.
Act No. 89 of 1983	Customs and Excise Amendment Act	The whole.
Act No. 89 of 1984	Customs and Excise Amendment Act	Sections 1 to 12.
Act No. 101 of 1985	Customs and Excise Amendment Act	Sections 1 to 16.
Act No. 52 of 1986	Customs and Excise Amendment Act	The whole.
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act	Section 37.
Act No. 84 of 1987	Customs and Excise Amendment Act	Sections 1 to 37, 39 to 40 and 44..
Act No. 69 of 1988	Customs and Excise Amendment Act	Sections 1 to 13.

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Act No. 60 of 1989	Liquor Products Act	...
Act No. 68 of 1989	Customs and Excise Amendment Act	Sections 1 to 17 and 19 to 20.
Act No. 59 of 1990	Customs and Excise Amendment Act	Sections 1 to 42 and 46 to 47.
Act No. 111 of 1991	Customs and Excise Amendment Act	The whole.
Act No. 61 of 1992	Customs and Excise Amendment Act	Sections 1 to 14.
Act No. 105 of 1992	Customs and Excise Second Amendment Act	The whole.
Act No. 98 of 1993	Customs and Excise Amendment Act	The whole.
Act No. 19 of 1994	Customs and Excise Amendment Act	Sections 1 to 13.
Act No. 45 of 1995	Customs and Excise Amendment Act	The whole.
Act No. 44 of 1996	Customs and Excise Amendment Act	The whole.
Act No. 27 of 1997	Taxation Laws Amendment Act	Sections 11 to 15 and 22.
Act No. 34 of 1997	South African Revenue Service Act	In Schedule 3: The fifth paragraph dealing with amendments to the Customs and Excise Act, No. 91 of 1964.
Act No. 30 of 1998	Taxation Laws Amendment Act	Sections 57 to 61, 63 to 66, 68 to 76.
Act No. 32 of 1999	Taxation Laws Amendment Act	Section 6, 7 and 16.
Act No. 53 of 1999	Revenue Laws Amendment Act	Sections 46 to 55 and 57 to 73.
Act No. 30 of 2000	Taxation Laws Amendment Act	Sections 58, 60 to 66
Act No. 59 of 2000	Revenue Laws Amendment Act	Sections 60 to 62.
Act No. 19 of 2001	Revenue Laws Amendment Act	Sections 36 to 41, 44 to 53.
Act No. 60 of 2001	Second Revenue Laws Amendment Act	Sections 113 to 116, 120, 121 to 124, 127 to 133, 136 and 138 to 140.
Act No. 30 of 2002	Taxation Laws Amendment Act	Sections 42 to 53, 74 to 75 and 84.
Act No. 74 of 2002	Revenue Laws Amendment Act	Sections 102 to 109, 111 to 112.
Act No. 12 of 2003	Exchange Control Amnesty and Amendment of Taxation Laws Act	Sections 39, 41 and 50.
Act No. 45 of 2003	Revenue Laws Amendment Act	Sections 131 to 137, 139 to 143, 146, 148, 150 to 154.
Act No. 16 of 2004	Taxation Laws Amendment Act	



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Act No. 32 of 2004	Revenue Laws Amendment Act	Sections 66 to 72.
Act No. 34 of 2004	Second Revenue Laws Amendment Act	Sections 20 to 34.
Act No. 9 of 2005	Taxation Laws Amendment Act	Section 12.
Act No. 31 of 2005	Revenue Laws Amendment Act	Sections 85 to 86 and 88 to 95.
Act No. 32 of 2005	Revenue Laws Second Amendment Act	Sections 17 to 28.
Act No. 9 of 2006	Small Business Tax Amnesty and Amendment of Taxation Laws Act	...
Act No. 10 of 2006	Second Small Business Tax Amnesty and Amendment of Taxation Laws Act	Sections 10 and 11.
Act No. 20 of 2006	Revenue Laws Amendment Act	Sections 65 to 73.
Act No. 21 of 2006	Revenue Laws Amendment Act	Sections 8 to 9, 11, 17 to 20, 22, 30 and 34.
Act No. 8 of 2007	Taxation Laws Amendment Act	.....
Act No. 9 of 2007	Taxation Laws Second Amendment Act	Sections 10 and 12 to 15.
Act No. 35 of 2007	Revenue Laws Amendment Act	Sections 96 to 102.
Act No. 36 of 2007	Revenue Laws Amendment Act	Sections 6 to 7, 9 to 16, 18 to 20 and 22 to 32.