

SOUTH AFRICAN REVENUE SERVICE

No. R

2013

**CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES**

Under sections 77H and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R.1874 of 8 December 1995 are amended to the extent set out in the Schedule hereto.

IVAN PILLAY

ACTING COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

- (a) By the deletion in rule 77H.01 of the definitions of **“excise unit”**, **“General Manager: Enforcement and Risk”**, **“General Manager: Operations Support”**, **“Head: Customs Operations Unit”**, **“Head of Excise Product and Process”**, **“Operations Legal Support Division”**, **“Regional Operations Manager”** and **“regional office”**;
- (b) By insertion after the definition of **“appeal”** of the following definition:
- “appeal committee”** means any committee established in terms of these rules;
- (c) By the substitution for the definition of **“collective amount”** of the following definition:
- ““collective amount”** means the total amount paid or payable, as calculated by SARS in terms of this Act and any relevant provisions of the Value-Added Tax Act, 1991 and which is the amount determined in accordance with the decision to which the appeal relates as contemplated in these rules;”;

- (d) By the insertion after the definition of **“committee member”** of the following definitions:

“Compliance Centre” means any division dealing with compliance matters including those relating to excise operations”;

“Customs Trade Operations Division” means the division dealing with customs trade operations matters located at the Head Office of the South African Revenue Service;”;

- (e) By the insertion after the definition of **“deliver”** of the following definition:

“Deputy Commissioner: Strategy, Enablement and Enforcement” means an officer acting under a delegation from or under the control or direction of the Commissioner and who is charged with the operational management of the strategy, enablement and enforcement division;”;

- (f) By the insertion after the definition of **“documents”** of the following definitions:

“Executive: Compliance Centre Operations” means an officer acting under a delegation from or under the control or direction of the Commissioner and who is charged with the operational management of the compliance centres;

“Group Executive: Customs Trade Operations” means an officer acting under a delegation from or under the control or direction of the Commissioner and who is charged with the operational management of the customs trade operations division;

“Group Executive: Compliance” means an officer acting under a delegation from or under the control or direction of the Commissioner and who is charged with the operational management of compliance matters including the operational management of the excise division;

“Group Executive: Operational Service Escalations and Support” means an officer acting under a delegation from or under the control or direction of the Commissioner and who is charged with the operational management of the operational service escalations and support division;

“Legislative Interpretation Division” means a division located at the Head Office of the South African Revenue Service;

“Senior Manager: Trade Administration” means an officer acting under the control and direction of the Group Executive: Customs Trade Operations;

“Senior Manager: Compliance Excise” means an officer acting under the control and direction of the Group Executive: Compliance and who is charged with the management of compliance matters relating to excise.

“Senior Manager: Compliance Excise & VAT” means an officer acting under the control and direction of the Group Executive: Compliance and who is charged with the management of compliance matters relating to excise and VAT.

“Senior Specialist: Customs and Excise” means an officer acting under the control and direction of the Group Executive: Operational Service Escalations and Support;”;

(g) By the substitution in rule 77H.05 for paragraphs (c) to (e) of the following paragraphs:

(c) Where an appellant is not able to submit all the information, documents or things required to decide an appeal at the time that the appeal is delivered, the appellant must inform the Commissioner thereof and must promptly, but not later than 20 days from the date of delivery of the appeal, produce such information, documents or things.

(d) Where the Commissioner is satisfied that the appellant has not furnished all the information, documents or things required to decide the appeal, the Commissioner must, not later than 60 days after receipt of the appeal, notify the appellant accordingly and request him or her to deliver the information, documents or things as specified in that notice.

(e) The appellant must, within 60 days after delivery of the notice contemplated in paragraph (d), deliver all information, documents or things requested in that notice and as specified in that notice to the Commissioner.

(f) The Commissioner may extend the period in paragraph (e) by not more than 30 days where the Commissioner is satisfied that reasonable grounds exist on which the appellant is not able to deliver the information, documents or things specified by the Commissioner within that period and the appellant has, before the expiry of that period, requested the Commissioner in writing that the period be

extended, stating the grounds for the failure to provide such information, documents or things within that period.

- (g) Where any information, documents or things referred to in paragraphs (c), (e) and (f) are not delivered within the specified periods the appeal delivered will be deemed to be invalid.”;

- (h) By the substitution in rule 77H.06(a) for the words preceding subparagraph (i) and subparagraph (i) of the following words and subparagraph:

“Where an appeal is to be considered by the Commissioner, the Commissioner must on receipt of a notice of appeal contemplated in rule 77H.04 or the information contemplated in rule 77H.05(e), consider and decide the appeal and must, subject to paragraph (b), notify the appellant of the decision in writing –

- (i) in the case where the Commissioner requested information, documents or things under rule 77H.05(d), within a further 60 days after receiving such information documents or things; or”

- (ij) By the substitution in rule 77H.07 for paragraphs (b) and (c) of the following paragraphs:

“(b) An appeal against any tariff or valuation determination of an officer –

- (i) stationed at a branch office, may only be considered and decided by an authorised officer of the tariff and valuation division within the Legislative Interpretation Division;
- (ii) employed within the Legislative Interpretation Division, may only be considered and decided by the customs national appeal committee.;

- (c) The provisions of rules 77H.04, 77H.05 and 77H.06 (a), (b) and (d), shall apply *mutatis mutandis* to any such appeal considered by the Legislative Interpretation Division.”;

- (k) By the substitution in rule 77H.08 for paragraphs (a) and (b) of the following paragraphs:

“(a) Every appeal committee must have a chairperson who must be in the case of –

- (i) a branch office appeal committee, the Branch Manager in charge of that office, or in cases where such a committee serves more than one branch

office as contemplated in rule 77H.09(a)(ii), any of the Branch Managers of the branch offices concerned;

- (ii) a customs operations appeal committee, the Senior Manager: Trade Administration;
 - (iii) an enforcement and compliance risk appeal committee, an officer nominated by the Deputy Commissioner: Strategy, Enablement and Enforcement;
 - (iv) the customs national appeal committee, an officer nominated by the Commissioner.”;
 - (v) the excise regional appeal committee, the Senior Manager: Compliance Excise or the Senior Manager: Compliance Excise and VAT in charge of the office where the decision appealed against was made;
 - (vi) the national appeal committee, any Executive: Compliance Centre Operations.
- (b) The chairpersons referred to in paragraph (a) may temporarily nominate any other senior officer as chairperson of their respective appeal committees in instances where he or she is unable to attend an appeal committee meeting.”;
- (l) By the insertion in rule 77H.08 after paragraph (g) of the following paragraphs:
- “(h) No appeal may be made in respect of a decision by an appeal committee to another appeal committee.
- (ij) If any appellant is dissatisfied with a decision by an appeal committee the appellant may make use of the alternative dispute resolution procedures provided for in Part B of Chapter XA and the rules made thereunder or should institute legal proceedings.”;
- (m) By the substitution for rule 77H.09 of the following rule:
- “77H.09 (a) (i) A branch office appeal committee must be established by the Branch Manager at each branch office that has a staff complement of 12 or more officers stationed at that office.
- (ii) Where for operational reasons, the appeal committees of two or more branch offices are combined, the combined appeal committee will consider appeals delivered to any of those branches.

- (b) A branch office appeal committee may, subject to paragraph (c) and rule 77H.07, consider and decide an appeal against any decision taken by an officer stationed at –
 - (i) the same branch office where the branch office appeal committee has been established as contemplated in paragraph (a)(i);
 - (ii) any of the branch offices for which a combined appeal committee has been established as contemplated in paragraph (a)(ii).

- (c) A branch office appeal committee may not consider any appeal –
 - (i) where the collective amount to which the appeal relates exceeds R8 000 000; or
 - (ii) against a decision of a Branch Manager.”;

(n) By the insertion after rule 77H.09 of the following heading and rule:

“Excise Regional Appeal Committee

- 77H.09A (a)(i) The Executive: Compliance Centre Operations must establish an excise regional appeal committee at the Head Office of the South African Revenue Service.
- (ii) The excise regional appeal committee may consider and decide, subject to paragraph (b) and rule 77H.07 any appeal against any decision relating to excise operations of an officer stationed at a compliance centre.
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- (b) An excise regional appeal committee may not consider any appeal –
 - (i) where the collective amount to which the appeal relates exceeds R8 000 000;
 - (ii) against a decision of a Senior Manager: Compliance Excise or a Senior Manager Compliance Excise and VAT; or
 - (iii) against a decision of an Executive: Compliance Centre Operations.”

(o) By the substitution for rule 77H.10 of the following heading and rule:

“Excise National Appeal Committee

- 77H.10 (a) The Group Executive: Compliance must establish an excise national appeal committee at the Head Office of the South African Revenue Service.
- (b) The excise national appeal committee may consider and decide, subject to paragraph (c) and rule 77H.07, any appeal against any decision relating to excise operations –
- (i) of an officer stationed at any compliance centre for which an excise national appeal committee has been established as contemplated in paragraph (a);
 - (ii) of a Senior Manager: Compliance Excise or a Senior Manager: Compliance Excise and VAT;
 - (iii) an Executive: Compliance Centre Operations;
 - (iv) where the collective amount to which such appeal relates exceeds R8 000 000.
- (c) The excise national appeal committee may not consider any appeal against a decision of the Group Executive: Compliance.

(p) By the substitution for rule 77H.11 of the following heading and rule:

“Customs Trade Operations Appeal Committee

- 77H.11 (a) The Group Executive: Customs Trade Operations must establish a Customs Trade Operations Appeal Committee at the Head Office of the South African Revenue Service.
- (b) A Customs Trade Operations Appeal Committee may consider and decide, subject to paragraph (c) and rule 77H.07, any appeal against –
- (i) a decision of an officer stationed at a branch office at which no branch office appeal committee has been established as contemplated in rule 77H.09(a)(i);
 - (ii) a decision of an officer stationed at any other branch office where the collective amount to which such appeal relates exceeds R8 000 000;
 - (iii) the decision of –

- (aa) a Branch Manager; or
 - (bb) an officer employed within the customs trade operations division where the collective amount in respect of any such appeal does not exceed R10 000 000.
 - (c) A Customs Trade Operations Appeal Committee may not consider any appeal against a decision of the Senior Manager: Trade Administration or the Group Executive: Customs Trade Operations.”;
- (q) By the substitution for rule 77H.12 of the following heading and rule:

Enforcement and Compliance Risk Appeal Committee

- “77H.12 (a) The Deputy Commissioner: Strategy, Enablement and Enforcement must establish an enforcement and compliance risk appeal committee.
- (b) An enforcement and compliance risk appeal committee may, subject to paragraph (c) and rule 77H.07, consider and decide any appeal against a decision of an officer acting under the control and direction of the Deputy Commissioner: Strategy, Enablement and Enforcement.
 - (c) An enforcement and compliance risk appeal committee may not consider any appeal against –
 - (i) a decision of a Branch Manager;
 - (ii) a decision of an officer contemplated in rule 77H.08(a)(iv) or the Deputy Commissioner: Strategy, Enablement and Enforcement” .;
- (r) By the substitution for rule 77H.13 of the following rule:

- “77H.13 (a) The Commissioner must establish a customs national appeal committee at the Head Office of the South African Revenue Service.
- (b) The customs national appeal committee must consider and decide any appeal–
 - (i) against a decision of –
 - (aa) the Group Executive: Customs Trade Operations and the Senior Manager: Trade Administration;
 - (bb) the Group Executive: Operational Service Escalations and Support and the Senior Specialist: Customs and Excise;

- (cc) an officer employed within the tariff or valuation division in Head Office;
 - (dd) an officer contemplated in rule 77H.08(a)(iv); or
 - (ee) the Deputy Commissioner: Strategy, Enablement and Enforcement.
- (ii) where the collective amount to which the appeal relates exceeds R10 000 000, with the exception of appeals dealt with by the enforcement and compliance risk appeal committee; or
 - (iii) any such other appeal as the Commissioner may direct.”;

(s) By the substitution in rule 77H.14 for the words preceding paragraph (a) of the following words:

“The Commissioner or the chairperson of any appeal committee, as may be applicable, must ensure that – “;

(t) By the substitution in item 202.00 of the Schedule to the Rules of the following form:

“DA 51 Internal Administrative Appeal in terms of the Customs and Excise Act, 1964”.