

CUSTOMS CONTROL ACT, 2014
CHAPTER 37 AMENDMENTS

NOTES TO STAKEHOLDERS

These amendments are aimed at establishing uniform appeal and dispute resolution procedures for the Customs Control Act, 2014 and the Tax Administration Act, 2011 (TAA) and for that purpose to align the provisions of Chapter 37 of the Control Act with the corresponding provisions contained in Chapter 9 of the TAA.

As Chapter 9 of the TAA only applies to dispute resolution where a client initiates the proceedings by lodging an objection, Part 2 of Chapter 37 is retained to cover the situation where customs on own initiative reconsiders a decision.

Also note that to give effect to the above amendments there will be several consequential technical amendments in the Customs Control Act, the Customs Duty Act and the Excise Duty Act, not reflected here, that will be contained in the eventual Amendment Bill.

These amendments need to be read with the circulated Fourth Batch of Draft Customs Control Rules.

Comments are to be submitted **by no later than 30 January 2015** and can be sent to Ms Samantha Authar via email to sauthar@sars.gov.za

GENERAL EXPLANATORY NOTE:

[] Words that are between square brackets and in bold typeface, indicate deletions from the existing enactments

_____ Words that are underlined with a solid line, indicate insertions in the existing enactments

Amendment of section 825 of Act 31 of 2014

1. Section 825 of the Customs Control Act, 2014, is hereby amended by the substitution in paragraph (b) for the word “settling” of the word “resolution”.

Substitution of section 826 of Act 31 of 2014

2. The following section is hereby substituted for section 826 of the Customs Control Act, 2014:

“Proceedings for internal reconsideration of decisions

826. A decision of the Commissioner, a customs officer or a SARS official may internally be reconsidered and be confirmed, altered or repealed [~~—(a)~~] in terms of Part 2 of this Chapter, either—

[(i)](a) on initiative by the Commissioner, whether or not the Commissioner took the decision;

[(ii)](b) on own initiative by the customs officer or SARS official who took the decision; or

[(iii)](c) 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 5 of this Chapter]”.

Substitution of section 827 of Act 31 of 2014

3. The following section is hereby substituted for 827 of the Customs Control Act, 2014:

“Proceedings for dispute resolution

827. (1) A dispute between the Commissioner and **[another person arising from the implementation, enforcement or interpretation of this Act, the Customs Duty Act or the Excise Duty Act]** a person aggrieved by a decision of the Commissioner, a customs officer or a SARS official may be resolved through –

- (a) **[any of the proceedings referred to in section 826]** the objection and appeal procedures provided for in Chapter 9 of the Tax Administration Act;
- (b) alternative dispute resolution procedures **[in terms of Part 4 of this Chapter]** provided for in Chapter 9 of the Tax Administration Act;
- (c) procedures for the settlement of disputes **[in terms of Part 5 of this Chapter]** provided for in Chapter 9 of the Tax Administration Act; or
- (d) judicial proceedings.

(2) Chapter 9 of the Tax Administration Act must for purposes of subsection (1) be applied despite the fact that this Act, the Customs Duty act and the Excise Duty Act are excluded from the definition of “tax Act” in the Tax Administration Act.

(3) For purposes of such application –

- (a) any reference in Chapter 9 to –
 - (i) a decision referred to in section 104(2) of the Tax Administration Act must be read as including a reference to a decision as defined in section 824 of this Act; and
 - (ii) a taxpayer must be read as including a reference to a person aggrieved by a decision as defined in section 824 of this Act; and
- (b) Chapter 9 must be applied with any other necessary changes the context may require.”.

Amendment of section 828 of Act 31 of 2014

4. Section 828 of the Customs Control Act, 2014, is hereby amended by the substitution for the expression “sections 826 and 827” of the expression “section 827”.

Amendment of section 829 of Act 31 of 2014

5. Section 829 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for the expression “sections 826 and 827” of the expression “section 827”.

Amendment of section 830 of Act 31 of 2014

6. Section 830 of the Customs Control Act, 2014, is hereby amended by the substitution for the expression “sections 826 and 827”, wherever it occurs, of the expression “section 827”.

Amendment of section 832 of Act 31 of 2014

7. Section 832 of the Customs Control Act, 2014, is hereby amended –

(a) by the substitution for the words preceding paragraph (a) of the following words:

“(1) The Commissioner, a customs officer or a SARS official may, at any time, on own initiative **[or on written request by an aggrieved person]**—”; and

(b) by the addition of the following subsection:

“(2) A customs officer or a SARS official may not exercise any of the powers referred to in subsection (1)(a) or (b) without the approval of the Commissioner or of the supervisor of that officer or official.”.

Amendment of section 833 of Act 31 of 2014

8. Section 833 of the Customs Control Act, 2014, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The Commissioner may, at any time, on own initiative **[or on written request by an aggrieved person]**—”.

Amendment of section 834 of Act 31 of 2014

9. Section 834 of the Customs Control Act, 2014, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“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]**—”.

Amendment of section 835 of Act 31 of 2014

10. Section 835 of the Customs Control Act, 2014, is hereby amended –

- (a) by the deletion of paragraph (a) of subsection (2);
- (b) by the substitution for subparagraph (i) of subsection (2)(b) of the following subparagraph:

“(i) **[such an appeal]** any proceedings provided for in Chapter 9 of the Tax Administration Act.”;

- (c) by the substitution for subparagraph (ii) of subsection (2)(b) of the following subparagraph:

“(ii) alternative dispute resolution proceedings in terms of **[Part 4 of this Chapter]** Chapter 9 of the Tax Administration Act. or”; and

- (d) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) a decision which is part of a settlement in terms of **[Part 5 of this Chapter]** Chapter 9 of the Tax Administration Act.”.

Repeal of section 837 of Act 31 of 2014

11. Section 837 of the Customs Control Act, 2014, is hereby repealed.

Repeal of Parts 3, 4 and 5 of Chapter 37 of Act 31 of 2014

12. Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act, 2014, are hereby repealed.

Repeal of section 861 of Act 31 of 2014

13. Section 861 of the Customs Control Act, 2014, is hereby repealed.