

CUSTOMS DUTY RULES
CHAPTER 3
PAYMENT OF DUTY, PENALTIES AND INTEREST

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Part 2: Deferment of duties

Definitions

3.11A In this Part—

“applicant”, in relation to—

- (a) a deferment benefit application contemplated in—
 - (i) section 24(2)(a)(i) of the Customs Duty Act, means the person applying for the deferment of duty benefit;
 - (ii) section 24(2)(a)(ii), means the person on whose behalf the customs broker applies for the deferment of duty benefit; and
 - (iii) section 24(2)(a)(iii), means the customs broker applying for the deferment of duty benefit; or
- (b) a deferment benefit amendment application, means the deferment benefit holder applying for the amendment;

“deferment benefit application” means an application for a deferment of duty benefit contemplated in section 24(2)(a)(i), (ii) or (iii), as the case may be;

“maximum deferment amount” means the maximum amount available for the deferral of duty under a deferment benefit granted to a person;

“payment date” means the 7th, 14th or 21st of a month selected by the person to whom a deferment benefit is granted as the day on or before which duties deferred by that person in terms of rule 3.13(f) must be paid.

Persons who may apply for deferment of duty benefits (section 24(2)(a))

3.11B (1) Any person referred to in section 24(2)(a)(i), (ii) or (iii) of the Customs Duty Act that complies with subrule (2) may apply for a deferment of duty benefit in terms of that section.

- (2) An applicant must—
- (a) in the case of an application in terms of section 24(2)(a)(i) or (ii), be a registered person liable for the payment of duty on goods that are cleared by or on behalf of such person in terms of section 89(1)(a) of the Control Act for home use under Chapter 8 of that Act, but excluding such a person who is a non-local importer, a casual importer or the registered agent of a non-local casual importer;¹
 - (b) have a record of compliance with the Control Act, the Customs Duty Act, the other tax levying Acts and the Customs and Excise Act, 1964, during a period of five years preceding the date of the application;
 - (c) have an effective accounting, record keeping and operational system consistent with generally accepted accounting practice;
 - (d) be registered as an electronic user for eFiling and have an effective computerised system capable of complying with deferment of duty accounting requirements;
 - (e) have sufficient financial resources and be of sound financial standing; and
 - (f) be continuously engaged in the import of goods or related activities.

(3) The question whether an applicant has a record of compliance with the legislation referred to in subrule (2)(b) must be determined in accordance with rule 1.8 of the Customs Control Rules.

Deferment benefit applications (sections 24(2)(a) and 60(c))

3.12 (1) A deferment benefit application must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

¹ Note that in terms of section 24(2)(a)(i) only persons liable for the payment of duty, *as may be prescribed by rule*, may apply for a deferment benefit. The purpose of this rule, therefore, is to limit the categories of persons who may in terms of section 24(2)(a)(i) apply for deferment benefits. Firstly, it limits section 24(2)(a)(i) applicants to registered persons clearing goods in terms of section 89(1)(a) of the Control Act; in other words to those persons clearing goods as stated in that section **for home use under Chapter 8 upon importation** of the goods. Deferment of duty benefits will therefore not be available for persons clearing goods for home use after the goods have first been cleared for a customs procedure, such as warehousing. Also excluded are persons liable for duties on imported goods cleared for inward or home use processing. Secondly, the rule also aims to exclude from the permitted categories of applicants certain subcategories that do clear goods for home use under Chapter 8 upon importation, viz. casual importers, non-local importers and registered agents of non-local casual importers. These subcategories will therefore also not be entitled to apply for deferment benefits. Note that the registered agent of a non-local importer who is not a casual importer is not excluded and such an agent will be able to apply for deferment benefits.

- (2) A deferment benefit application must reflect the following information:
- (a) The applicant's name and customs code;
 - (b) if a customs broker applies on behalf of the applicant in terms of section 24(2)(a)(ii), the name and customs code of the customs broker;
 - (c) if the application is submitted by an ordinary representative on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;²
 - (d) the payment date selected by the applicant;
 - (e) the maximum deferment amount required by the applicant to be available under the deferment of duty benefit applied for;
 - (f) if the deferment benefit is required to remain valid for less than three years, the validity period required by the applicant;³
 - (g) whether the applicant requires—
 - (i) a single deferment account for all duty deferments; or
 - (ii) separate deferment accounts for different or a combination of places of entry or purposes; and
 - (h) details of the applicant's accountant, if any, including name and SARS tax reference number or, if that person does not have a SARS tax reference number, his or her identification document number, physical address and contact details.
- (3) An application for a deferment of duty benefit must be supported by—
- (a) documentary evidence of the financial position of the applicant, which must include—
 - (i) a copy of the applicant's audited financial statements for the three financial years preceding the date of application or, in the absence of such financial statements in the case of an applicant being an individual, an auditor's certificate to the effect that the applicant has sufficient financial resources; or

² If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act as applied by section 228 of the Customs Duty Act, Part 5 of Chapter 41 of the Customs Control Rules will apply.

³ if a period shorter than three years is not specifically applied for, the three year period referred to in rule **3.13(b)(ii)** will automatically apply.

- (ii) any other credible evidence of sufficient financial resources;⁴
- (b) the applicant's bank statements for a period of six months preceding the application, certified by the bank; and
- (c) if a customs broker will administer the deferment account on behalf of the applicant, a document indicating that the customs broker is duly authorised by the applicant to utilise the applicant's deferment account, should the deferment benefit be granted.

(4) (a) Supporting documents referred to in subrule (3) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule 13.7 of these Rules.

(b) The customs authority may at any time request an applicant to submit any relevant additional documents required by it to prove the applicant's financial position.

Grounds for refusal of deferment benefit applications

3.12A The grounds on which a deferment benefit application may be refused include the following:

- (a) The applicant does not comply with rule 3.11B(2);
- (b) the application does not comply with rule 3.12;
- (c) the application or any supporting document contains a false or misleading statement or omits to state a fact which is material to the consideration of the application;⁵ or
- (d) the tax matters of the applicant are not in order in accordance with section 197 of the Control Act, as applied by section 228 of the Customs Duty Act.

General conditions for deferment benefits (section 24(2)(b)(ii))

⁴ See rule 41.27 of the Customs Control Rules which provides that an alternative document may instead of a specific supporting document be used, provided that the alternative document is capable of being used for the purpose of confirming, substantiating or evidencing the same information for which the relevant supporting document is required.

⁵ See Part 2 of Chapter 1 of these Rules for application of materiality principle.

3.13 A deferment benefit is subject to the following general conditions to the extent that those general conditions are not inconsistent with any special conditions determined by the customs authority for a specific deferment benefit holder.⁶

- (a) A deferment of duty benefit granted to—
- (i) an applicant in terms of section 24(2)(a)(i) or (ii) of the Customs Duty Act may be utilised only for the payment of—
 - (aa) duty on a clearance for home use in terms of section 89(1)(a)⁷ of the Control Act for which the deferment benefit holder is liable; and
 - (bb) underpayments of duty referred to item (aa) provided an amended declaration indicating the underpayment is submitted within the deferment period for that duty; or
 - (ii) a customs broker in terms of section 24(2)(a)(iii) of the Customs Duty Act may be utilised only for the payment of—
 - (aa) duty on a clearance for home use in terms of section 89(1)(a) of the Control Act for which the customs broker becomes liable in terms of section 39(2)(a) of the Customs Duty Act;⁸ and
 - (bb) underpayments of duty referred to item (aa) provided an amended declaration indicating the underpayment is submitted within the deferment period for that duty.
- (b) A deferment of duty benefit remains valid, subject to paragraph (c) of this subrule and section 25 of the Customs Duty Act—
- (i) if the deferment benefit was granted for a specific period of less than three years, the period for which the deferment benefit was granted; or
 - (ii) if the deferment benefit was not granted for such a specific period, for a period of three years.
- (c) A deferment of duty benefit lapses if the deferment benefit holder during the validity period of the deferment benefit ceases to be a registered person as

⁶ The customs authority may in terms of section 24(2)(b)(i), apart from conditions as prescribed by rule and applying generally to all deferment benefit holders, also determine conditions applying to a specific deferment benefit holder. Specific conditions trump general conditions.

⁷ Goods must when imported be cleared in terms of section 89(1) of the Control Act for home use or a permissible customs procedure. By referring specifically to paragraph (a) of section 89(1), this condition of the deferment benefit will limit utilisation of the benefit to clearances for home use *upon importation* of the goods only; in other words the deferment benefit will not be available to persons clearing goods for home use in terms of section 110 after the goods have first been cleared for a customs procedure, such as warehousing.

⁸ See footnote under rule 3.13(a)(i) which also applies here.

contemplated in rule **3.11B(2)(a)** or a licensed customs broker, as the case may be.

- (d) The deferment benefit holder must provide security determined in accordance with section 689 of the Control Act to cover any tax risks that may arise when deferring payment of duty in terms of the deferment of duty benefit during its validity period.
- (e) If the deferment benefit holder has different deferment accounts as contemplated in rule **3.14(b)** or (c), the security must cover all deferments of duty in terms of the deferment benefit granted to the deferment benefit holder, without distinction between the accounts in which those deferments are accounted for.
- (f) A deferment benefit holder may defer the payment of duty for a period of up to 30 calendar days ending seven calendar days before that benefit holder's payment date.
- (g) Duties deferred in terms of paragraph (f) must be paid on or before the said payment date of the benefit holder.
- (h) Where that payment date is not a working day, payment becomes due on the last working day before that date.
- (i) Duties deferred during the calendar month of March must be paid by 12:00 on the 29th of March.
- (j) A deferment of duty benefit may be utilised for any amount of duty referred to in paragraph (a) that becomes payable⁹ by the deferment benefit holder up to but not exceeding the maximum deferment amount for which the deferment benefit was granted, irrespective of the number deferment accounts as contemplated in rule **3.14(b)** or (c).
- (k) The unpaid balance outstanding on duties deferred on the deferment account of a deferment benefit holder, or if a benefit holder has more than one deferment account, the combined unpaid balances outstanding on duties deferred on all those accounts, may at no point exceed the maximum deferment amount available under that benefit holder's deferment benefit.

⁹ Import duty for which the deferment benefit is available becomes payable when imported goods are cleared in terms of section 89(1)(a) of the Control Act for home use under Chapter 8 of that Act. (See section 22(1)(a) of the Customs Duty Act.)

- (l) Amounts of duty deferred in terms of a deferment of duty benefit must be paid through eFiling or another payment method as determined by the Commissioner.
- (m) Any late payment is subject to the payment of interest in terms of section 44 and the imposition of fixed amount penalties in terms of section 202 of the Customs Duty Act.
- (n) If a deferment benefit holder wants to exceed the maximum deferment amount for which the deferment benefit was granted that benefit holder must lodge—
 - (i) an application in terms of rule **3.15** for an increase of the maximum deferment amount sufficient to cover the additional amount of duty to be deferred; and
 - (ii) additional security determined in terms of section 689 of the Control Act to cover the increase in the maximum deferment amount.
- (o) The deferment benefit holder may, instead of increasing the maximum amount per monthly deferment cycle in accordance with paragraph (n) settle or pay a portion of the deferment account sufficient to cover that amount.

Deferment accounts

3.14 An applicant whose application for deferment of duty benefit has been approved is entitled to the allocation by the customs authority of—

- (a) a single deferment account for all deferments of duty by the deferment benefit holder;
- (b) separate deferment accounts for each or a combination of the places of entry through which goods are imported for which the deferment of duty benefit of the deferment benefit holder will be utilised; or
- (c) separate deferment accounts for any other purposes, as may be agreed, for which the deferment of duty benefit of the deferment benefit holder will be utilised.

Applications for amendment of duty deferment benefit (section 60(c))

3.15 (1) A deferment benefit holder, or a customs broker acting on behalf of a deferment benefit holder, may apply for an amendment of the deferment of duty benefit by submitting an application for amendment to the customs authority

electronically through e-Filing, subject to rule **41.13** of the Customs Control Rules, as applied by rule **13.4** of these Rules.

- (2) An application referred to in subrule (1) must reflect the following:
- (a) The name and customs code of the deferment benefit holder;
 - (b) if a customs broker applies on behalf of the applicant in terms of section 24(2)(a)(ii), the name and customs code of the customs broker;
 - (c) if the application is submitted by an ordinary representative on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;¹⁰
 - (d) the deferment account number of the holder of the deferment benefit;
 - (e) details of the amendment required; and
 - (f) the reasons for the required amendment, which may be motivated in a separate supporting document which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule **13.7** of these Rules.

(3) An application for amendment of a deferment of duty benefit must, as may be applicable, be supported by the documents referred to in rule **3.12(3)**, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule **13.7** of these Rules.

Transitional rules

3.15A (1) A deferment of customs duty granted or allowed by the Commissioner in terms of the Customs and Excise Act, 1964, expire in terms of section 935B(1)(a) of the Control Act on the effective date.

(2) A person referred to in rule **3.11B** to whom section 935B(2)(a) of the Control Act applies may apply for a deferment of duty benefit in terms of section 24 of the Customs Duty Act before the effective date at any time after [REDACTED]¹¹

¹⁰ If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act as applied by section 228 of the Customs Duty Act, Part 5 of Chapter 41 of the Customs Control Rules will apply.

¹¹ Note that all deferments granted under the 1964 Act expire in terms of section 935B(1)(a) of the Control Act on

(3) If an application referred to in subrule (1) is considered and decided before the effective date,¹² the decision on the outcome of the application comes into effect in terms of section 942(3)(c) of the Control Act on the effective date or on any later date stated in the decision.

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the effective date. However, section 942A(3) allows these deferment holders to apply for deferment benefits and for the customs authority to consider and decide these applications before the effective date so that deferment benefits can be utilised without a break during the transition.

¹² Section 942(3)(d) of the Control Act requires such applications to be submitted, considered and decided as if all the provisions and rules regulating these applications were in full force and effect. However, no decision takes legal effect before the effective date.