

SOUTH AFRICAN REVENUE SERVICE

No. R.

2019

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

Under sections 58A 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 **with effect from**

**EDWARD CHRISTIAN KIESWETTER
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

SCHEDULE

Insertion of rules for section 58A

The following rules are hereby inserted under Chapter VII of the Rules to the Customs and Excise Act, 1964 (Act No. 91 of 1964):

“RULES FOR SECTION 58A OF THE ACT

58A.01 Definitions

For purposes of the rules under section 58A unless the context otherwise indicates—

“**allowable quantity**” or “**AQ**”, in relation to excisable goods referred to in rule 58A.02, means the quantity of such goods that may be entered for home consumption during a controlled period –

- (a) as calculated in accordance with rule 58A.04, in the case of a manufacturer or an importer of such goods other than a new entrant; or

(b) approved in terms of rule 58A.05, in the case of a new entrant;

“Budget Day” means the day in any year on which the Minister of Finance delivers the National Budget Speech in Parliament;

“day” means a calendar day; and

“new entrant”, in relation to excisable goods referred to in rule 58A.02, means a manufacturer or an importer of such goods who starts entering such goods for home consumption 30 days or less before the start of a controlled period.

58A.02 Excisable goods to which section 58A applies

Section 58A and the rules thereunder apply to imported and locally manufactured cigarettes of tariff subheading 2402.20 and 2402.90.2.

58A.03 Controlled period during which anti-forestalling measures apply

A controlled period contemplated in section 58A(1) comprises a period starting on 1 December of any year and ending at the time when the rate of excise duty is increased on Budget Day of the following year.

58A.04 Formula to be used by persons other than new entrants for calculation of allowable quantities of excisable goods to be entered for home consumption during controlled period

A manufacturer or an importer of excisable goods referred to in rule 58A.02 other than a new entrant must use the following formula for calculating the allowable quantity (AQ) in respect of such goods:

$$AQ = \{[(TQ \div Y) + 2\% (TQ \div Y)] \times 90 \text{ days}\}$$

Where –

- (a) TQ is the total quantity of such goods that that manufacturer or importer has entered for home consumption during the period represented by Y;

- (b) Y is the number of days from 1 December of the previous year to 30 November of the current year during which that manufacturer or importer has entered such goods for home consumption, which is –
 - (i) 365 days in the case of entries that occurred from before or since 1 December of the previous year; or
 - (ii) the number of days from the first entry after 1 December of the previous year until 30 November of the current year in the case of entries over a period of less than 12 months;
- (c) 90 days are the maximum number of days in a controlled period; and
- (d) 2% is an allowance for reasonable growth in the market.

58A.05 Approval of allowable quantities of excisable goods to be entered for home consumption by new entrants during controlled period

- (a) Any new entrant must apply to the Commissioner for approval of the allowable quantity of excisable goods that may be entered by that new entrant for home consumption during the relevant controlled period.
- (b) An application contemplated in subrule (1) must at least 14 days before the start of the relevant controlled period be submitted –
 - (i) electronically through eFiling if this mode of submission is available for such application; or
 - (ii) in paper format to the Excise Office serving the area where the applicant's operations are carried out.
- (c) An application referred to in paragraph (b) must reflect –
 - (i) the applicant's name and customs and excise client number;
 - (ii) if the application is submitted by a clearing agent or registered agent on behalf of the applicant, the name and customs and excise client number of the clearing agent or registered agent;

- (iii) the date on which the applicant started entering the relevant excisable goods for home consumption, or on which the applicant intends to start entering such goods;
 - (iv) the product range of such goods, including brand names and sizes;
 - (v) the total quantity of such goods, regardless of brands or sizes, that the applicant intends to enter for home consumption during the controlled period;
 - (vi) the geographical area where such goods are, or are expected to be, consumed; and
 - (vii) details of orders in respect of such goods, which may be provided in a separate supporting document.
- (d) An application referred to in paragraph (b) must be supported by the following documents:
- (i) A document motivating the quantity of excisable goods referred to in paragraph (c)(v);
 - (ii) if the applicant is a natural person, a certified copy of that person's identification document;
 - (iii) if the applicant is a juristic entity, a certified copy of the document authorising the person who submitted the application to act on behalf of the entity;
 - (iv) a certified copy of the identification document of an authorised person referred to in subparagraph (iii);
 - (v) if the application is submitted by a clearing agent or a registered agent, a certified copy of the document authorising such person to act as the representative of the applicant;
 - (vi) documents substantiating any material facts mentioned in the application; and
 - (vii) any other documents that may be required by the Commissioner for purposes of considering the application.

58A.06 Applications for approval of quantities for home consumption in excess of allowable quantities

- (a) A person that seeks approval as contemplated in section 58A(3) to enter a quantity of excisable goods for home consumption in excess of the allowable quantity must submit an application –
- (i) electronically through e-filing if this mode of submission is available for such application; or
 - (ii) in paper format to the Excise Office serving the area where the applicant's operations are carried out.
- (b) An application referred to in paragraph (a) must reflect –
- (i) the applicant's name and customs and excise client number;
 - (ii) if the application is submitted by a clearing agent or registered agent on behalf of the applicant, the name and customs and excise client number of the clearing agent or registered agent;
 - (iii) the kind or description of excisable goods to which the application relates;
 - (iv) the relevant controlled period;
 - (v) the current allowable quantity as well as the excess quantity applied for; and
 - (vi) the reason why the excess quantity is applied for, which may be motivated in a separate supporting document.
- (c) An application referred to in paragraph (b) must be supported by the following documents:
- (i) If the applicant is a natural person, a certified copy of that person's identification document;
 - (ii) if the applicant is a juristic entity, a certified copy of the document authorising the person who submitted the application to act on behalf of the entity;
 - (iii) a certified copy of the identification document of an authorised person referred to in subparagraph (ii);
 - (iv) if the application is submitted by a clearing agent or a registered agent, a certified copy of the document authorising such person to act as the representative of the applicant;
 - (v) documents substantiating any material facts mentioned in the

- application; and
- (vi) any other documents that may be required by the Commissioner for purposes of considering the application.

58A.07 Keeping of records

- (a) A person contemplated in rule 58A.03A must keep record of –
 - (i) any information used for purposes of calculating the allowable quantity as well as calculations done in respect of such allowable quantity;
 - (ii) any information used for purposes of obtaining an increase of the allowable quantity, if applicable; and
 - (iii) the quantity of excisable goods entered for home consumption during a specific controlled period.

- (b) A person contemplated in rule 58A.04(a) must keep record of –
 - (i) any information used for purposes of obtaining approval of an allowable quantity; and
 - (ii) any information used for purposes of obtaining an increase of the allowable quantity, if applicable; and
 - (iii) the quantity of excisable goods entered for home consumption during a specific controlled period.

- (c) A person who does not comply with the relevant recordkeeping requirement in paragraph (a) or (b) is guilty of an offence and will be liable on conviction to a fine not exceeding R8000.

58A.08 Anti-forestalling penalties

The sum to be deposited in circumstances contemplated in terms of section 91(1)(a) in respect of a contravention of –

- (a) section 58A(3) is R15 000 or double the value of the goods cleared in excess of the allowable quantity, whichever is the greatest; and
- (b) rule 58A.06(a) or (b) is R8 000.”.