

SOUTH AFRICAN REVENUE SERVICE

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**CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES (DAR/33)**

Under Chapter XA 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 4 June 2007**.

**PRAVIN JAMNADAS GORDHAN
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

SCHEDULE

(a) By the insertion of the following rules after the rules for section 76:

“CHAPTER XA

**INTERNAL ADMINISTRATIVE APPEAL; ALTERNATIVE DISPUTE RESOLUTION;
DISPUTE SETTLEMENT**

PART A: INTERNAL ADMINISTRATIVE APPEAL

RULES FOR SECTION 77H OF THE ACT

Definitions

77H.01 In these rules, any meaning ascribed to any word or expression in the Act, shall bear the meaning so ascribed and, unless the context otherwise indicates -

“appeal” means an internal administrative appeal contemplated in Part A of Chapter XA of the Act and these rules;

“appellant” means any person contemplated in section 77B who lodges an appeal and includes any duly authorised representative of such person;

“branch manager” means the officer in charge of a branch office and may include a Controller;

“branch office” means an office of the South African Revenue Service (SARS), excluding the Head Office, for which hours of attendance is prescribed in these rules;

“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, to which an appeal relates as contemplated in rules 77H.06, 77H.07, 77H.09, 77H.10, 77H.11, 77H.12 and 77H.13;

“committee member” means any officer nominated by the chairperson of an appeal committee to be a member of that appeal committee and who serves or may serve on that appeal committee when an appeal is considered;

“deliver” means –

- (a) handing the relevant document to the relevant person;
- (b) sending the relevant document to the relevant person by registered post;
- (c) telefaxing the relevant document to the relevant person;
- (d) transmitting the relevant document to the relevant person by electronic means:

Provided that in the case of paragraphs (c) and (d), the original, signed document must be handed to that person or sent by registered post to that person within ten days after it being so telefaxed or transmitted by electronic means;

“documents” includes documents as contemplated in section 101 of the Act;

“excise unit” means the unit dealing with excise matters located at the Head Office of the South African Revenue Service (SARS) and includes officers stationed at other centres who form part of that unit;

“General Manager: Enforcement and Risk” 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 enforcement and risk division;

“General Manager: Operations 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 to the operational support division;

“Head: Customs Operations Unit” 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 operations unit;

“Head of Excise Product and Process” 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 excise division;

“Operations Legal Support Division” means a division within the South African Revenue Service (SARS) Head Office;

“Regional Operations Manager” 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 over any number of branch offices situated within a particular region;

“**regional office**” means the office of a regional operations manager;

“**tariff or valuation determination**” means a determination contemplated in section 47(9), 65 or 69 of the Act;

“**the Act**” means the Customs and Excise Act, 1964.

Delivery of applications, notifications and other communications

77H.02 All communications for the purpose of any procedure contemplated in these rules must be delivered.

Request for reasons

77H.03 (a) Any person or his or her duly authorised representative contemplated in section 77B may by written notice delivered to the Commissioner within 30 days after the date of a decision, request the Commissioner to furnish reasons for the decision. The written notice must specify the address at which the person will accept notice and delivery of such reasons and any documents relating thereto.

(b) Upon request by the person concerned, the period prescribed in paragraph (a) may be extended by the Commissioner for a period of not more than 60 days where the Commissioner is satisfied that reasonable grounds exists for the delay in complying with that period.

(c) Where in the opinion of the Commissioner adequate reasons have already been provided, the Commissioner must within 30 days after receipt of the request contemplated in paragraph (a), notify the person concerned accordingly in writing which notice must refer to the documents wherein such reasons were provided.

(d) Where in the opinion of the Commissioner adequate reasons have not yet been provided, the Commissioner must provide written reasons for the decision within 60 days after receipt of the request contemplated in paragraph (a):
Provided that where in the opinion of the Commissioner more time is required due to the complexity of the matter, the principle or the amount involved or any other circumstances deemed reasonable by the Commissioner, the Commissioner must, before expiry of that 60 day period, inform the person concerned that written reasons will be provided not later than 45 days after the date of expiry of that first 60 day period.

Submission of appeals

77H.04 (a) An appellant who is aggrieved by a decision of an officer may appeal against such a decision to an appeal committee authorised in these rules to consider such an appeal, or to the Commissioner where—

- (i) the appellant so requests; and
- (ii) an appeal committee is not authorised by rule to consider such an appeal.

(b) Any such appeal must –

- (i) be submitted on a duly completed form DA 51;
- (ii) be in writing, specifying in detail the grounds upon which it is made;
- (iii) specify an address at which the appellant will accept delivery of the Commissioner's or an appeal committee's decision in respect of such appeal and any other document or communication relating to the appeal;
- (iv) be signed by the appellant: Provided that, where the appellant is unable to personally sign the appeal, the person signing on behalf of the appellant must state in an annexure to the appeal –
 - (aa) the reason why the appellant is unable to sign the notice of appeal form;
 - (bb) that he or she has the necessary power of attorney to sign on behalf of the appellant; and
 - (cc) that the appellant is aware of the submission of the appeal and agrees with the grounds thereof;
- (v) be delivered within 30 days after –
 - (aa) in the case where the appellant has requested reasons under rule 77H.03, either the date of the notice by the Commissioner that adequate reasons have been provided or the date that reasons were furnished by the Commissioner, as the case may be; or
 - (bb) in any other case, the date of the notice of the decision; and
- (vi) be delivered to the office from which the notice of the decision was issued.

Validity of appeals

- 77H.05 (a) Where an appellant delivers an appeal that does not comply with the requirements of rule 77H.04 (b)(i), (ii), (iii) or (iv) the Commissioner may inform the appellant by notice within 60 days after receipt of appeal that he or she does not accept it as a valid appeal: Provided that the appellant may within ten days after delivery of such notice, or such a longer period as the Commissioner may agree to, deliver an amended appeal.
- (b) Where the appellant has failed to deliver his or her appeal to the office referred to in rule 77H.04 (b)(vi), the document delivered in terms of rule 77H.04 (b)(i) to (v) will be deemed to be invalid.
- (c) 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.
- (d) The appellant must, within 60 days after delivery of the notice contemplated in paragraph (c), deliver all information, documents or things requested in that notice and as specified in that notice to the Commissioner.
- (e) The Commissioner may extend the period in paragraph (d) 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.

Consideration of appeals

- 77H.06 (a) 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 (d), consider and either allow or disallow, in whole or in part, 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(c), within a further 60 days after receiving such information documents or things; or
 - (ii) in any other case, within a further 90 days after the date of the receipt of an appeal as contemplated in rule 77H.04 or amended appeal in terms of the proviso to rule 77H.05(a), as the case may be.
- (b) Where, in the opinion of the Commissioner, more time is required due to the complexity of the matter, the principle or amount involved, or any other circumstances deemed reasonable by the Commissioner, the Commissioner must, before expiry of the periods prescribed in paragraph (a), inform the appellant that he or she will decide on the appeal within such longer period which -
- (i) in the case of rule 77H.06(a)(i), may not exceed 60 days; or
 - (ii) in the case of rule 77H.06(a)(ii), may not exceed 90 days.
- (c) Where an appeal committee is authorised by rule to decide an appeal, the provisions of rule 77H.05 and paragraphs (a) and (b) shall apply *mutatis mutandis* to the chairperson of that appeal committee.
- (d) The Commissioner or the chairperson of an appeal committee authorised to decide an appeal must, in the case of an appeal that does not have the outcome desired by the appellant, inform the appellant of his or her further rights regarding alternative dispute resolution and the institution of judicial proceedings.

Tariff and valuation appeals

- 77H.07 (a) An appeal against a tariff or valuation determination of an officer stationed at a branch office, must be delivered to the branch office concerned.
- (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 Operations Legal Support Division ;
 - (ii) employed within the Operations Legal Support Division, may only be considered and decided by the customs national appeal committee
- (c) The provisions of rule 77H.04, 77H.05 and 77H.06 (a), (b) and (d) shall apply *mutatis mutandis* to any such appeal considered by the Operations Legal Support Division.

Appeal committees

General

- 77H.08
- (a) Every appeal committee must have a chairperson who must be –
 - (i) in the case of a branch office appeal committee, the Branch Manager in charge of that office;
 - (ii) in the case of a regional office appeal committee, the Regional Operations Manager;
 - (iii) in the case of a customs operations appeal committee, the Head: Customs Operations Unit;
 - (iv) in the case of an enforcement and risk appeal committee, an officer nominated by the General Manager: Enforcement and Risk;
 - (v) in the case of the customs national appeal committee, an officer nominated by the General Manager: Operations Support.
 - (b) The persons referred to in subparagraphs (i), (ii) and (iii) may temporarily nominate any other officer as chairperson of their respective appeal committees in instances where he or she is unable to attend an appeal committee meeting.
 - (c) The chairperson of an appeal committee must nominate members of the committee from officers under his or her control and must ensure that those officers have the necessary knowledge and skills to consider and deal properly with any appeal brought before that committee.
 - (d) No appeal committee may consist of less than four committee members and the chairperson of that committee.
 - (e) An appeal committee may consist of more than four committee members, provided that the total number of committee members when taken together with the chairperson of that committee results in an uneven number of persons.
 - (f) The decision of any appeal committee authorised to decide an appeal will be final unless the Commissioner amends the decision or withdraws it and make a new decision as contemplated in section 77F(1)(c) of the Act.
 - (g) An officer whose decision is being appealed against may not participate in any deliberation on the merits of the appeal or in any discussions to decide the outcome of the appeal.

Branch Office Appeal Committees

- 77H.09
- (a) 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.
 - (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 the same branch

office where the branch office appeal committee has been established as contemplated in paragraph (a).

- (c) A branch office appeal committee may not consider any appeal –
 - (i) where the collective amount to which the appeal relates exceeds R5 000 000;
 - (ii) against a decision of a Branch Manager.

Regional Office Appeal Committees

- 77H.10 (a) The Regional Operations Manager must establish a regional office appeal committee at each regional office to consider and decide, subject to rule 77H.07 any appeal against -
 - (i) the decision of any officer stationed at a branch office at which no branch office appeal committee has been established as contemplated in rule 77H.09(a),
 - (ii) a decision of -
 - (aa) a Branch Manager; or
 - (bb) an officer stationed at a regional office,where the collective amount in respect of any such appeal does not exceed R8 000 000.
- (b) A regional office appeal committee may not consider any appeal against a decision of a Regional Operations Manager.

Customs Operations Appeal Committee

- 77H.11 (a) The Head: Customs Operations Unit must establish a customs operations appeal committee at the Head Office of the South African Revenue Service (SARS).
- (b) A customs operations appeal committee may consider and decide, subject to rule 77H.07, any appeal -
 - (i) against a decision of a Regional Operations Manager; or
 - (ii) against a decision of an officer employed within the Customs Operations Unit or the excise unit,where the collective amount in respect of any such appeal does not exceed R10 000 000.
- (c) A customs operations appeal committee may not consider any appeal against a decision of the Head: Customs Operations Unit or the Head of Excise Product and Process.

Enforcement and Risk Appeal Committee

- 77H.12 (a) The General Manager: Enforcement and Risk must establish an enforcement and risk appeal committee.
- (b) An enforcement and risk appeal committee may, subject to rule 77H.07, consider and decide an appeal against a decision of any officer acting under the control or direction of the General Manager: Enforcement and Risk.

- (c) An enforcement and risk appeal committee may not consider any appeal against a decision of the General Manager: Enforcement and Risk.

Customs National Appeal Committee

- 77H.13
- (a) The General Manager: Operations Support must establish a customs national appeal committee at the Head Office of the South African Revenue Service (SARS).
 - (b) The customs national appeal committee must consider and decide any appeal -
 - (i) against a decision of –
 - (aa) the Head: Customs Operations Unit ;
 - (bb) the Head of Excise Product and Process;
 - (cc) an officer employed within the tariff or valuation division in Head Office; or
 - (dd) the General Manager: Enforcement and Risk.
 - (ii) where the collective amount to which the appeal relates exceeds R10 000 000; or
 - (iii) any such other appeal as the Commissioner may direct.

Records of proceedings

- 77H.14
- The Commissioner or the chairperson of any appeal committee, as may be applicable, must ensure that –
- (a) the committee’s deliberations and decisions are recorded;
 - (b) a copy of the letter informing the appellant of the decision of the committee is retained; and
 - (c) copies of all the documentation contemplated in paragraphs (a) and (b) are filed for record purposes.”

Transitional arrangements

- 77H.15
- These rules shall not apply to any –
- (a) appeal lodged before 4 June 2007;
 - (b) decision by an officer taken prior to 4 June 2007.
- (b) by the insertion 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”

