

Media Releases 2009

Release of the Draft Customs Control Bill and Draft Customs Duty Bill for Public Comment

Pretoria, 30 October 2009 – Today marks a significant milestone in the ongoing modernisation programme of the South African Revenue Service (SARS) with the release for public comment by 26 February 2010 of a new legislative framework relating to the customs control over people and goods moving across the borders of the Republic and the imposition, assessment and collection of customs duties.

Background

The re-write of the Customs and Excise Act, 1964, taking into consideration the increased focus on trade facilitation and customs control, regional economic integration, the distinct difference between customs and excise matters, applicable international conventions, trends linked to the globalisation of trade was announced by the previous Minister of Finance.

Drafting commenced in January 2005 after the conclusion of a research and policy development phase.

Objects of the Bills

SARS, as a modern customs administration is required to strike the appropriate balance between trade facilitation and economic growth, economic and community protection and border security. The current Customs and Excise Act, 1964, however, is no longer structurally suitable to serve as a vehicle for implementing a modern system of customs control in accordance with current international trends and best practices and needs to be replaced by a new legislative framework that:

- is simpler to understand, clear and predictable;
- supports a fast-paced international trade environment;
- is aligned with international customs conventions aimed at standardising customs procedures;
- supports the enforcement of a wide variety of national policies and laws at the border relating to border security, environmental controls and the protection of the economy and the people of South Africa; and
- provides for the levying, payment and recovery of customs duties on goods imported or exported from the Republic.

Presentation of the Bills

Due to the volume and complexity involved in providing an entirely new legislative framework to replace the current Customs and Excise Act, 1964, the customs and excise components have been split into two phases. The draft Customs Control Bill and the draft Customs Duty Bill constitute the first phase of the project and will be followed by the drafting, in the second phase, of an Excise Bill.

Once the draft Customs Control Bill and the draft Customs Duty Bill have been enacted into law the current Customs and Excise Act, 1964, will be retained for the continued administration of excise duties until the drafting of the Excise Bill has been completed and it has been enacted.

The draft Customs Control Bill

The draft Customs Control Bill is primarily concerned with the control of goods imported into or intended for export from the Republic. The rationale for this control is to ensure that any taxes imposed by various other laws on such goods are collected and that other laws regulating the import or export of specific goods are complied with.

As such the draft Bill can best be described as a law that will serve as a “platform” for the implementation of other laws that are concerned with goods imported into or exported from the Republic.

Laws that will rely for their implementation on the Customs Control Bill include, firstly, laws imposing taxes on goods when imported or exported, such as:

- The proposed Customs Duty Act, the proposed Excise Act,
- The VAT Act, 1991, and
- The Diamond Export Levy Act, 2007

Secondly, laws prohibiting or regulating the import or export of certain goods such as arms and ammunition, protected species, goods that are subject to permit control, counterfeit goods, etc. The primary aims of the draft Bill are:

- To provide systems and procedures for customs control of all goods and persons entering or leaving the Republic
- To enable the effective collection of tax on such goods imposed in terms of the tax levying Acts and
- To facilitate the implementation of other legislation applicable to such goods and persons.

The draft Customs Duty Bill

The scope of this Bill is confined to providing for the levying, payment and recovery of customs duties on goods imported or exported from the Republic. As such it is one of the so-called tax levying Acts which for its implementation will rely on the “platform” provided by the proposed Customs Control Act.

The draft Bill is structured around three broad topics; the imposition of duties, the assessment of duties, and the payment and collection of duties. It is also closely linked to the draft Customs Control Bill due to the fact that the draft Customs Duty Bill’s implementation is dependent on the implementation of the draft Customs Control Bill.

Noteworthy changes in the draft Customs Control Bill

The Customs Control Bill serves as the legislative platform for the changes to policy, processes and technology that are to be delivered under the Customs Modernisation programme. It furthermore complies with the requirements of all international instruments and conventions to which the Republic is a signatory, as well as with relevant recommendations of the World Customs Organization (WCO). Some examples of the changes are as follows:

- An emphasis on electronic reporting and declarations in order to speed up processing, reduce errors and enable effective risk assessment.
- The clearance and release of goods for home use or an internationally accepted customs procedure (transit, warehousing, temporary admission, inward processing, etc)
- Fast-tracking clearance and release procedures in respect of certain categories of persons (accredited) or goods (low-value goods).
- Complete chapters on subjects not comprehensively dealt with in the current legislation (transshipment, coastwise traffic of domestic vessels, stores, tax free shops, exports, international postal articles, security for payment of tax, detention, seizure and confiscation of goods, prohibited and restricted goods, etc).
- Comprehensive provisions relating to damaged, destroyed, lost or unaccounted for goods as well as for abandoned and unclaimed goods.
- Greater flexibility as regards extension of time periods and the granting of authorisations, permissions or approvals; and
- The introduction of advance binding rulings (private, class and general) on the interpretation or application of a provision of the Bills in order to create legal certainty.

Noteworthy changes in the draft Customs Duty Bill

The Customs Duty Bill provides for the levying, payment and recovery of customs duties on goods imported or exported from the Republic. Some examples of the changes introduced by the Bill are the following:

- The payment and recovery of duty when goods are imported otherwise than through places of entry or when goods are not dealt with in terms of the provisions of the customs procedure under which they were cleared and released.
- Appropriate provisions to give maximum effect to the principle of self-assessment with the role of the customs authority focussed on verification of the self-assessment rather than on assessing the amount of tax. Introduction of a flat rate of duty payable on non-commercial goods of a customs value below a certain threshold to expedite the clearance and release of such goods;
- Period of liability for duty increased from two to three years from the date of assessment in order to ensure alignment with similar periods contained in other Acts administered by the Commissioner
- The refund without application in circumstances set out in a general directive authorising such refunds, but excluding refunds relating to duties, penalties or interest paid or overpaid as a result of errors in tariff, valuation or origin.
- Provisions relating to binding advance rulings on the tariff, value and origin determination of goods to be cleared during a future period for home use or a customs procedure.

Explanatory notes

An Explanatory Memorandum is provided in order to assist commentators working through the draft Customs Control Bill and the draft Customs Duty Bill.

Commentary period

The draft Customs Control and Customs Duty Bills, supported by an Explanatory Memorandum and a standardised comment sheet to aid in the review of the comments received, is published on the [Draft Tax Administration Bill page](#). Public comments can be submitted to the address specified on the Bills page until the deadline of **26 February 2010**.

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