

CUSTOMS
EXTERNAL POLICY
DEFERMENT

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1 SUMMARY OF MAIN POINTS

- a) Customs allows clients to partake in the Customs deferment arrangement by deferring the payment of Customs duty and VAT for a period of up to thirty (30) days. This document encapsulates the deferment and processing requirements of Customs duties and VAT.
- b) It outlines the legal requirements and the respective timeframes allowed **and must be read in conjunction with the requirements set in the following documents:**
 - i) **SC-CF-04 - Completion of Declarations – External Manual; and**
 - ii) **SC-CF-55 – Clearance Declaration – External Policy.**

2 POLICY

2.1 Application for deferment

- a) Customs duties and VAT are payable in accordance with Section 39(1)(b) at the time of importation.
- b) However, payment may be deferred for up to thirty (30) days on a deferment account. No duties and levies on locally manufactured goods may be deferred under this arrangement.
- c) Only Customs clients registered in terms of Section 59A may utilise the deferment arrangement. Applications for a deferment account must be made in terms of SC-CF-19.
- d) Clients will be requested to provide security. The respective bond requirements are covered in SC-SE-05.
- e) On the application form, the client must list all offices that they wish to make use of and select the respective payment dates at each of these offices, which can be from the first to the twenty-eighth of each month. **Once accepted by Customs** this will be the agreed payment date. The agreed payment date will remain fixed every month, for as long as the client participates in the deferment arrangement.
- f) Customs reserves the right to alter such a date to ensure even distribution of the workload. This will be done prior to the client partaking in the deferment arrangement and must be approved by the client.
- g) **Clients may request** changes in the payment dates, security (bonds) and deferment limits

2.2 Client **submits** deferment declaration and monitors CSA

- a) If a clearing agent or broker utilises the deferment account of an importer they need to obtain a power of attorney and provide Customs with a **certified** copy of such. The original must be kept by the client and produced to Customs when requested to do so. See SC-DT-B-01-A08 – Power of Attorney.
- b) Clients must have access to eFiling to view the CSA. Where eFiling is not available, the Branch Office or Customs Compliance Centre (CCC) will assist the client by obtaining the CSA or transaction information from service manager. Refer to CA-01-M01 – Customs eAccount on eFiling – External Manual.
- c) The client submits a deferment Customs clearance declaration (CCD) (SC-CF-04 and SC-CF-55), monitors and manages the deferment account during the agreed deferment period.
- d) During the deferment period
 - i) The Interim CSA must be closely monitored and prompt corrective action taken to increase the deferment level when required to do so or correct any incorrect information on the CSA.
 - ii) If the deferment limit in any deferment period has been exceeded the client will not be able to defer any more duties or VAT for the remainder of that period. All further duties or VAT must be paid immediately on eFiling or by any alternative Customs payment method in the event that eFiling is not available, until such time the client either increases the deferment limit or settles the account in full or in part. Deferment limits are not “reset” at the start of the new deferment cycle.

- iii) The deferment level is set at a maximum amount sufficient to cover all deferred charges that are likely to occur in any given period at the time the applicant joins the deferment arrangement. For peak periods, the client can request an increase in the deferment limit for a specific period. An additional bond might be required. Once the specified deferment period in which the increase has been granted expires the increase will be removed and the deferment limit will revert to the original deferment limit amount.
 - iv) Clients are allowed to make partial payments on the deferment account. Refer to paragraph 2.4.
- e) At the end of the deferment period
- i) A CSA is available on eFiling and if eFiling is not available by contacting the SARS Contact Centre.
 - ii) Clients are required to ensure that:
 - A) Their accounts are accurate and complete;
 - B) All unallocated credits are resolved prior to the statement period end date; and
 - C) Any outstanding debt is settled within the defined payment terms.

2.3 Clients makes adjustments

- a) CSA discrepancies
- i) If the client **submitted** an incorrect **CCD**, an amended **or cancellation CCD** must be submitted (SC-CF-04):
 - A) **The conditions for a refund application and the standard set of supporting documents where an over payment in duty is involved are contained in SC-DT-C-13. This will include a CR1.**
 - B) **The information in SC-CF-55 – Clearance Declaration – External Policy must also be referred to for assistance on the submission of CCDs and supporting documents.**
 - ii) **Problems on the account** must be raised with the respective Customs Office **within seven (7) calendar days from the issuing of the CSA**. If the client disagrees with the amounts reflected on the CSA due to any circumstances other than (i) above a detailed submission must be submitted to the Customs Branch Office for consideration, setting out:
 - A) The grounds for disagreement; and
 - B) **To motivate why:**
 - I) **He/she should not be penalised;**
 - II) **Why the deferment account must not be suspended or cancelled; and/or**
 - III) **The account must be excluded from suspension until such time as the issue that is being addressed is finalised.**
- b) **The client's motivation, with the supporting documents, can include, but are not limited to the following reasons:**
- i) **Transactions reflected on the client's deferment account which:**
 - A) **Is not for his/her company; or**
 - B) **The amount reflected is either incorrect or was paid; and**
 - ii) **Deferment accounts that was suspended in error.**
- c) The amount due on the CSA less **approved adjustments** must be paid on or before the agreed payment date to avoid interest and penalties. See paragraph 2.4 for payment.
- d) In order to settle the **reduced** amount referred to in (c), all adjustments must be accounted for in full during the settlement period.

2.4 Client makes payment

- a) Payment must be done by eFiling (CA-01-M01 – Customs eAccount on eFiling – External Manual and **GEN-PAYM-01-G01 - Payment Rules – External Guide**).
- b) Deferment accounts are payable within seven (7) calendar days from the close of the deferment account period. This date is known as the agreed payment date and may differ from one (1) client to another.

- c) Clients are allowed to make partial payments on the deferment account during the deferment account period. However, the full amount must be **made before or** on the agreed payment date to avoid any penalties and interest charges on the outstanding amount.
- d) The amount due on the CSA may differ from the amount due on the deferment account, as it will not reflect any part payments received or adjustments made during the settlement period. If the client has submitted a possible adjustment that has not been approved by Customs at the time of payment, the client can either:
- i) Settle the amount due as reflected on the CSA.
 - ii) Settle the amount due on the CSA less those adjustments accounted for during the settlement period, as defined (see paragraph 4).
 - iii) Pay the CSA amount less the amount not yet taken into account. If this option is chosen the following may occur:
 - A) To avoid possible suspension the client must ensure that a detailed submission as referred to in paragraph 2.3a)ii) is received before the agreed payment date at the Cash Office in the Branch Office where the deferment account is held. Follow-ups on the case must be directed to the local Branch Office.
 - B) If the grounds given by the client for the lesser amount are not accepted by Customs as legitimate adjustments the client may become liable for penalties, interest and the deferment account may be suspended/**cancelled**.
- e) If eFiling is not possible, alternative arrangements must be agreed to.
- f) If the date falls on a public holiday or weekend, payment must occur on the last working day before this date.
- g) In addition to the twelve (12) regular payment dates chosen by the client there will be a thirteenth payment date in March each year.
- h) Clients may be required to make additional payments for the financial year-end period. The respective payment date for the March year-end process must be communicated to deferment participants at least thirty (30) calendar days before payment is required in order to allow deferment account holders to plan accordingly.
- i) To illustrate, if a client selects the seventh as payment date, the deferment periods will be as follows:

Starting date	Ending date	Payment date
2.../08/01	2.../08/30	2.../09/06
2.../09/01	2.../09/30	2.../10/07

- j) Refunds or drawbacks due to a client will be offset against a client's deferment account if the deferment account is in arrears. This will only be applicable where it is the importer's own deferment account. No offsetting will take place between different clients' accounts submitted by a single agent (SC-DT-C-13).

2.5 Suspension and cancellation

- a) In the case that a client is in breach of the deferment agreement the system **will automatically suspend the client account at midnight for a period as stated in paragraph (c)(iii) if payment is not made on time (GEN-PAYM-01)**.
- b) A client is in breach of the deferment agreement where:
- i) The full amount is not settled on the agreed payment date – this will be reflected on the monthly Customs Statement of Account (CSA) which serves as a notice to suspend or cancel the deferment account;
 - ii) The client ceased to trade for a period of six (6) months;
 - iii) The guarantor has withdrawn the security; or
 - iv) Any other SARS debt is outstanding.

- c) Where a client is in breach as stipulated in (a) above:
- i) Representation must be submitted by the client within the seven (7) calendar days from the issuing of the CSA to motivate why he/she must not be penalised, suspended or cancelled;
 - ii) The client must pay any amounts due that are not under dispute; and
 - iii) If no grounds for mitigating circumstances could be found by Customs or presented by the client the client must be:
 - A) For the first default suspended from the deferment arrangement for a period of one (1) month from the statement closing date.
 - B) For the second default suspended from the deferment arrangement for a period of two (2) months from the statement closing date.
 - C) For the third default the deferment account will be cancelled. The client may not be reinstated on the deferment arrangement and may only submit a new application after a minimum period of twelve (12) calendar months has elapsed. The Certificate of Approval to partake in the Deferment Scheme (DA 652) must be returned to Customs within three (3) working days from the date of receipt of this notification of **cancellation**.
- d) The deferment arrangement may not be utilised under any circumstances if the client has been suspended as stated above or cancelled and the client must pay the respective duties and/or VAT for any new import declaration immediately in addition to settling the deferment account. **Suspended/cancelled clients trying to submit a deferment CCD will receive a CUSRES 6 message rejecting the CCD stating "Credit limit failed".**
- e) The account will be subject to the outstanding duties, penalties and interests which will be covered in the CSA.
- f) **Clients may dispute the suspension or cancellation of their deferment account if they can prove that the account has been suspended or cancelled in error. Customs will review the client's motivation (submitted as per paragraph 2.3(a)ii) and the deferment account may be re-instated if it is proven that the account was suspended in error.**
- g) Customs will consider the facts of the case and may:
- i) Allow the continuation of the deferment arrangement;
 - ii) Make a decision regarding a particular amount or declaration; or
 - iii) If there are no additional facts or grounds for mitigating circumstances in the allowed period, the client must be suspended from utilising the deferment arrangement and penalties may be **imposed**.
- h) Cancellations can be requested by the following entities and the procedures as defined in SC-SE-05 must be complied with:
- i) By Customs;
 - ii) The financial institution; or
 - iii) The deferment client.

2.6 Keeping records

- a) Every client must keep for record purposes for a period of five (5) years:
- i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
 - ii) Any data related to such documents created by means of a computer.
- b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A).
- c) Every client must produce such books, accounts and documents on demand.

2.7 Penalties

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence.

- b) Offences may render the client liable to, as provided for in the Act:
- i) Monetary penalties (SC-CO-01-02);
 - ii) Criminal prosecution; and/or
 - i) Suspension and/or cancellation of the deferment account [see paragraph 2.5 above], registration, license, accreditation and/or designation.

2.8 Promotion of Administrative Justice Act

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
- i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
 - ii) Imposes a duty on the State to give effect to those rights;
 - iii) Promotes an efficient administration as well as good governance; and
 - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
- b) Administrative action which significantly and unfavourably affects the rights or valid expectations of any person must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
- c) A person must be given:
- i) Written reasons of the nature and purpose of the proposed administrative action;
 - ii) A reasonable opportunity to make representations;
 - iii) A clear statement of the administrative action; and
 - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.
- e) Before administrative action can be taken by Customs the declarant must be allowed the opportunity to:
- i) Obtain assistance and, in serious or complex cases, legal representation;
 - ii) Present and dispute information and arguments; and
 - iii) Appear in person.
- f) Declarants whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within ninety (90) days after the date on which the declarant became aware of the action, request Customs to furnish written reasons for the action.
- g) Customs must within ninety (90) days after receiving the request, give the declarant adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

2.9 Appeals against decisions

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CC-24.

- b) If clients disagree with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

3 RELATED INFORMATION

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 39(1b), 40(1)(e), 40(3)(i), 59A(2)(a), 64E(2)(b), 78, 105 and 114(1)(a)(i) Customs and Excise Rules: Rules 39.09, 59A.01, 59A.03(1), 64E, 120.08 and 120.09 Value-Added Tax Act No. 89 of 1991: Sections 13(4), 13(6) and 39(4)
Other Legislation:	Promotion of Administrative Justice Act No. 3 of 2000: Section 3
International Instruments:	Kyoto Convention General Annexure Chapter 4 – B - Duties and Taxes, Standards 4.15, 4.16 and 4.17

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
CA-01-M01	Customs eAccount on eFiling – External Manual.
GEN-PAYM-01-G01	Payment Rules – External Guide
SC-CC-24	Internal Administrative Appeal – External Policy
SC-CC-26	Alternative Dispute Resolution – External Policy
SC-CF-04	Completion of Declarations – External Manual
SC-CF-19	Licensing Registration and Designation – External Policy
SC-CF-55	Clearance Declaration – External Policy
SC-CO-01-02	Offences and Penalties – External Policy
SC-DT-C-13	Customs Refunds and Drawbacks – External Policy
SC-SE-05	Bonds – External Policy

3.3 Quality Records

NUMBER	TITLE
CR1	Application for Refund VOC ito 76.04
DA 650	Application for Deferment
DA 652	Certificate of Approval to partake in the Deferment Scheme
SC-DT-B-01-A08	Power of Attorney

4 DEFINITIONS AND ACRONYMS

Adjustment accounted for	Any part payment or adjustment made or allocated against the “amount due” in the settlement or reconciliation period
Amount due	The value of duties and VAT that was deferred during the statement period and which remains unpaid at statement issue date and this amount must be paid by the due date of that statement
CCC	Customs Compliance Centre
CSA	Customs Statement of Account
Defer	Temporary suspension of duties and taxes for a period of up to thirty (30) days
Settlement or reconciliation period	The seven (7) calendar days period from the close of the deferment account
VAT	Value-Added Tax

5 DOCUMENT MANAGEMENT

Directive Owner	Group Executive: Customs Operations
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Detail of change from previous revision	<p>a) Included:</p> <ul style="list-style-type: none"> i) The automated suspension process. ii) The CR1 as a requirement when adjustments to the deferment account results in an overpayment. Clients must adhere to SC-DT-C-13 – Refunds and Drawback – External Policy. iii) Reference to SC-CF-04 - Completion of Declarations – External Manual and SC-CF-55 – Clearance Declaration – External Policy. <p>b) Removed reference to BP-02 - Customs and Excise Payments – External Policy as it has been replaced with GEN-PAYM-01-G01 - Payment Rules – External Guide</p> <p>c) Appeals against decisions in terms of import VAT penalties can now be made in terms of the Customs and Excise Act. Reference in this regard to the Tax Administration Act 28 of 2011 (TAA) has therefore been removed from Customs policies and Standard Operating Procedure</p> <p>d) Added the Promotion of Administrative Justice Act (PAJA) paragraph</p>
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