

**EXCISE**

**EXTERNAL POLICY**

**ENVIRONMENTAL LEVY ON  
ELECTRICITY GENERATED IN SOUTH  
AFRICA**

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## 1 SUMMARY OF MAIN POINTS

- a) This **policy** applies to “Electricity” **generators** that generate electricity in South Africa (SA) from **non-renewable** energy sources as reflected in Note 4(d) of item 148.01 of Schedule 1 Part 3B.
- b) The **policy** also refers to **generators** of electricity through the co-generation process as regulated to be liable to the environmental levy in the general notes of item 148.01 of the Schedule.
- c) This **policy** does not cover:
  - i) **SARS payment rules** as this is dealt with in document **GEN-PAYM-01-G01**;
  - ii) Declaration and Return submission via eFiling as this is dealt with in document **SE-ACC-02-M02**;
  - iii) Submission of accounts / returns as this is dealt with in document **SE-ACC-05**;
  - iv) Bonds as this is dealt with in document **SE-BON-02**;
  - v) The completion of the DA 176 Environmental levy account for Electricity as this is dealt with in document **SE-ELC-03-M01**;
  - vi) Licensing and Registration requirements as **these** are dealt with in document **SE-LR-02**;
  - vii) Prescribed Payment Rules as these are dealt with in document **SE-PAY-02**; and
  - viii) Refunds as these are dealt with in document **SE-REF-02**.

## 2 POLICY

### 2.1 Liability for levy

- a) An environmental levy is payable on locally generated electricity if it is generated according to the provisions and notes mentioned in item 148.01 of Schedule 1 Part 3B which also reflects the levy rate applicable.
- b) The levy is assessed and collected on the principles of “Duty at Source” (DAS).

### 2.2 Liability for levy

- a) Under item 148.01 in Part 3B of Schedule 1, electricity generated under the following circumstances will not be liable to the payment of Environmental levy:
  - i) Electricity generated by electricity generation plants with an installed capacity of three (3) megawatts (MW) but not exceeding five (5) MW;
  - ii) Electricity generated from renewable sources; and
  - iii) Subject to the threshold requirements been met as specified in Note (5)(a), (b) or (c), electricity generated from co-generation by using:
    - A) Waste heat or energy from waste co-generation;
    - B) Combined heat and power co-generation; or
    - C) Renewable co-generation.
  - iv) Electricity generated from -
    - A) Concentrated solar power; and
    - B) Non-renewable sources of which the energy input does not exceed 15% of the total energy input, over a calendar year.

### 2.3 Keeping of records

- a) Every registrant / licensee must:
  - i) Keep and maintain proper registers, electronic or manually to record the daily readings of the generated electricity;
  - ii) Keep proper books, accounts and documents and any data created by means of a computer of all transactions relating to the generation of electricity for a period of five (5) years calculated from the end of the calendar year in which any such document was created, lodged or required for the purposes of any Customs and Excise procedure;
  - iii) Have a back-up server to safeguard the storage of the electronic information. The back-up server needs to be installed in a fire-proof area or off-sight;

- iv) Include in such books, accounts, documents and data any requirements prescribed in any provision of the Act as may be applicable in respect of the manufacture of goods in a Customs and Excise manufacturing warehouse (VM);
  - v) Produce such books, accounts, documents and data on demand at any reasonable time and render such returns or submit such particulars in connection with the transactions relating to the generation of electricity as the Commissioner may require.
- b) Such books, accounts, documents and data must include:
- i) A record wherein the licensee or registrant must record daily -
    - A) Receipts of non-renewable energy sources for generation;
    - B) Quantities of non-renewable energy sources used and the quantities of electricity generated from such materials; and
  - ii) A record wherein the registrant must record daily the quantities of electricity generated from:
    - A) Renewable sources; or
    - B) Co-generation or sources respectively contemplated in rule 54FA.04(a)(ii)(aa) and (bb).
  - iii) A record from which can be readily ascertained that the electricity generated over a calendar year by a registrant contemplated in rule 54FA.04(a)(ii), is generated in accordance with provisions of Note 2(c) or (d), as may be applicable, to item 148.01.01 of Section B of Part 3 of Schedule 1.

## 2.4 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 the following, as provided for in the Act:
  - i) Monetary penalties;
  - ii) Criminal prosecution; and / or
  - iii) Suspension or cancellation of registration, license or accreditation.

## 2.5 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 administration procedure depends on the circumstances of each case.
- c) A person must be given:
  - i) Written notice 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) Before administrative action can be taken by Excise, the client 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.
- e) Just administrative action requires Excise Officers 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.
- f) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, after the date on which the client became aware of the action, request Excise to furnish written reasons for the action.
- g) Excise must after receiving the request, give the client adequate reasons in writing for an administrative action. It must, subject to subsection (4) of the Promotion of Administrative Justice Act 3. of 2000 and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.

## 2.6 Appeal 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 [SE-APL-02](#).
- b) Should clients be unhappy with a decision of any appeal committee their recourse will be to lodge an application for Alternative Dispute Resolution (ADR) 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](#).

## 2.7 Co-generation report

- a) For the purposes of implementing Note 2(c) or (d) of Section B of Part 3 of Schedule 1 with effect from 1 July 2009, a person who generates electricity from sources contemplated in Note 2(d) or Note 5 of Section B of Part 3 of Schedule 1 in an electricity generation plant with an installed capacity exceeding three (3) MW, must submit a report, prepared, signed and certified by an engineer accredited with the Engineering Council of South Africa, of the electricity so generated for every calendar year as contemplated in Note 6 of Section B of Part 3 of Schedule 1.
- b) Where according to the report referred to in paragraph 3.1 (a) the electricity generated does not comply with Note 2(c) or (d) of Section B of Part 3 of Schedule 1, as may be applicable, for any calendar year and such electricity is generated in an electricity generation plant with an installed capacity exceeding five (5) MW, the electricity producer must submit the report referred to in paragraph 3.1 a) to reach the Commissioner within thirty (30) days after the end of the calendar year.
- c) A licensee contemplated in 54FA.10(c) who generates electricity complying with note 2(c) or (d), as may be applicable, during the following calendar year must submit the report referred to in paragraph (a) to reach the Commissioner within thirty (30) days after the end of that calendar year.

## 2.8 Assessment of electricity levy

- a) **Leviable Quantity**
  - i) The levy payable on electricity is assessed on the kW.h generated during an accounting period multiplied by the levy rate.
- b) **Rate of levy**
  - i) The rate of levy to be used for the purpose of calculation of the levy on electricity is the relevant rate of levy in terms of in terms item 148.01 Schedule 1 Part 3B.
  - ii) This could be at time of generation in a VM.
  - iii) It must be noted that the relevant rate of levy is subject to change as per the Minister of Finance's discretion and upon publication thereof in an official government Gazette.
  - iv) The Controller / Branch Manager is under no legal or procedural obligation to timely inform all clients of such a rate of levy change but it is proposed that, as a gesture of goodwill and in

fostering of good relations, the Controller / Branch Manager do send a communiqué to such effect to the clients on which it has an effect.

### c) Calculation of the levy

**Example:** 1 MW = 1000 KW

=2083 (Megawatt hours) MW,h generated for (accounting period)

=2083 x 1000 (equals 1 MW)

=2 083 000 kW x 0.035c (Levy rate per hour)

=R 72 905, 00.

## 3 RELATED INFORMATION

### 3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Customs and Excise Act. No. 91 of 1964:</b> Sections 19, 27, 54E, 59A and Chapter VA and 119A <b>Customs and Excise Rules:</b> 19, 27, 54FA.01 to 54FA.10, 59A.01(a), 119A.R101A(10)(d) and item 200.03 <b>Customs and Excise Schedule:</b> 1Part 3B
Other Legislation:	<b>None</b>
International Instruments:	<b>None</b>

### 3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
EA-01-M01	eAccount on eFiling – External Manual
GEN-PAYM-01-G01	SARS Payment Rules – External Guide
SC-CC-26	Alternative Dispute Resolution – External Policy
SE-ACC-02-M02	Declaration and Return Submission via eFiling – External Manual
SE-ACC-05	Submission of Accounts>Returns – External Policy
SE-APL-02	Internal Administrative Appeal – External Policy
SE-BON-02	Bonds – External Policy
SE-ELC-03-M01	DA 176 Environmental Levy Account for Electricity Levy – External Manual
SE-LR-02	Licensing and Registration - External Policy
SE-PAY-02	Prescribed Payment Rules – External Policy
SE-REF-02	Refunds - External Policy

### 3.3 Quality Records

Number	Title
DA 176	Environmental levy Account for Electricity Levy
EXD 01	Excise Duty and Levy return

## 4 DEFINITIONS AND ACRONYMS

<b>Calendar year</b>	A period of twelve (12) months from 1 July 2009 to 30 June 2010 and thereafter a period of twelve (12) months from 1 July of any other year to the end of June of the following year.
<b>Co-generation</b>	The generation of electricity contemplated in Note 2(c), subject to Note 5(a), (b) or (c) electricity generated from co generation by using waste heat or energy from waste co-generation, combined heat and power co-generation or renewable co-generation of item 148.01.

Combined heat and power co-generation	Generation which produces as part of the core design other useable forms of energy in addition to electricity utilising coal or natural gas with a minimum co-production of steam or thermal energy other than electricity over a calendar year of at least 10% of total combined process energy.
Controller / Branch Manager	The officer designated by the Commissioner to be the Controller / Branch Manager of Customs and Excise in respect of that area or matter and includes officer acting under the control or direction of any officer so designated by the Commissioner.
DAS	Duty At Source – Assessment of duty and levies at the time when fuel and other excisable products except wine is removed from the manufacturing warehouse.
Directive	Used to convey policies, responsibilities and procedures.
Environmental Levy on Electricity	The Environmental Levy imposed in terms of item 148.01 in Part 3 of Schedule 1 and the Notes thereto.
kW.h	Kilowatt per hour
Licensees	Any person licensed under any provision of the Act.
MW	Megawatts
Non-renewable sources	Includes coal, petroleum based liquid fuels, natural gas or nuclear.
Renewable co-generation	Generation where the renewable fuels source is both a primary source of energy used for generation and a co-product of an industrial process with a minimum of 50% of the total energy input over a calendar year to come from such renewable fuel sources being sugar bagasse, woody biomass, black liquor or mill wastes such as organic soaps and methanol
Renewable sources	Biogas; geothermal; hydro; ocean currents; solar; tidal waves; or wind.
Schedule 1 Part 3B	Environmental levy on Electricity Generated in South Africa.
Policy	Used to convey the Policy mandated by legislation and the sequential steps to be followed
Waste heat or energy from waste co-generation	Generation utilising waste or under utilised energy in the form of waste heat or process furnace off-gas from an industrial process with a minimum of 60% of the total energy input over a calendar year for such generation to come from such waste or under utilised energy.

## 5 DOCUMENT MANAGEMENT

Policy Owner	Executive: <b>Excise</b>
Detail of change from previous revision	<b>Paragraph 1 has been updated;</b> <b>Provision has been made for the Promotion of Administrative Justice Act under paragraph 2.5;</b> <b>Cross References under paragraph 3.2 have been updated;</b> <b>Policy owner changed.</b>
Template number and revision	<b>GC-TM-03 - Rev 9</b>