

EXCISE
EXTERNAL POLICY
SAMPLES

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1 SUMMARY OF MAIN POINTS

- a) Where a client is required to produce a sample in terms of Section 22 of the Customs and Excise Act, No. 91 of 1964 (the Act), such examination or extraction of a sample must take place under Excise supervision.
- b) This policy must be read in conjunction with the Special and Extra attendance policy (refer to **SE-GEN-08**).
- c) The policy does not cover:
 - i) Samples drawn by the Road Fuel Testing Units (RFTU's); and
 - ii) Compulsory **tariff determinations for alcoholic beverages** as these are dealt with in document **SE-TDN-02**.

2 POLICY

- a) The provisions pertaining to the extracting of samples is contained in Section 106 of the Act and the Rules thereto. Excise may during the manufacture of any Excisable goods, or at any time after such manufacture, take samples, without payment, from any person in possession of such manufactured or partly manufactured Excisable goods or of materials intended for the manufacture of Excisable goods.
- b) If Excise requires a sample from the client of identical or similar goods, the client must apply for special and extra attendance (refer to SE-GEN-08).

2.1 Extracting of samples

- a) The purpose for which Excise may take or require a client to produce samples of goods at any time or when required, in quantities necessary for:
 - i) Conducting an audit / inspection of the goods; and
 - ii) Establishing for the purpose of the Act, whether as part of such an audit / inspection or not:
 - A) The nature or characteristics of the goods;
 - B) The quality or content of the goods;
 - C) The tariff determination of the goods; and
 - D) Ascertaining the duties / levies payable thereon.
- b) During an audit / inspection, the extraction of the sample, if required, must be conducted by:
 - i) The client or his / her **appointed** representative and handed over to the Auditor Excise (AE), if present; or
 - ii) The AE, if the client or his / her representative is not present.
- c) The sample(s) must be truly identical to the product in question.
- d) Samples may be:
 - i) Examined, analysed or tested in any way;
 - ii) In terms of Section 107(2)(b), be analysed by a reputable third party in accordance with a method determined by the Commissioner, in which case the cost of the analysis must be borne by the manufacturer, registrant, licensee or owner of the goods;
 - iii) Subjected to a chemical, mechanical or technological process;
 - iv) Used for obtaining advice, including expert or technical advice, on the goods as reflected by the samples or a matter relating to the goods;
 - v) Utilised in any other way necessary for achieving the purposes as mentioned in (b) above; or
 - vi) Used as evidence in court or any other Excise proceeding.
- e) Where a client requests for a sample to be drawn:
 - i) Samples are to be taken under Excise supervision; and
 - ii) Prior permission must be obtained from the Controller / Branch Manager.

- f) The client may request the sample(s) to be returned to him / her after the tariff determination is made.

2.2 Submitting of samples

- a) Any sample submitted with a tariff determination will be retained in the SARS Head Office for record purposes for a period of two (2) years.
- b) All safety and handling information pertaining to the sample, for example, the Material Data Safety Sheet must be submitted with the samples by the manufacturer.
- c) If the samples are considered to be hazardous or dangerous, they must not be forwarded to Excise. An Auditor Excise (AE) must visit the client's premises and verify that the literature and / or chemical analysis certificates submitted instead of the required samples can be tied-up with the goods under the Excise procedure, for example, a request for tariff determination.

2.3 Returning of samples

- a) All samples of which the Excise analysis or determination has been finalised must be returned to the manufacturer, registrant, licensee or client / trader once the Excise procedure is finalised unless they are of a hazardous nature and such is determined from information obtained from either the outer packaging or client.
- b) The client must be informed by letter, sent via e-mail, to collect the samples from the relevant B/O. The letter will also advise the client of consequences of non-compliance.
- c) Samples returned by Excise, after the required time frame, must be collected and signed by the client or his / her appointed representative as proof of receipt. Excise must notify the client, in writing, that the sample was returned from Head Office and is available for collection thereof within five (5) days of the date of the letter.
- d) Hazardous samples must be transported to a more secured area for disposal by a Health and Safety Officer.
- e) In the case of destruction, a notice must be sent to the client.

2.4 Record keeping

- 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; 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 business / entity must produce such books, accounts and documents on demand whether or not registered / licensed for Excise.

2.5 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;
 - ii) Criminal prosecution; and / or
 - iii) Suspension or cancellation of registration and/or license.

2.6 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) 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 the Excise 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.
- f) Clients 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 client became aware of the action, request Excise to furnish written reasons for the action.
- g) Excise must within ninety (90) days after receiving the request, give the client adequate reasons in writing for the administrative action. If Excise 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.

2.7 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 SC-CC-24.
- 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.

3 REFERENCES

3.1 Legislation

| TYPE OF REFERENCE | REFERENCE |
|---|--|
| Legislation and Rules administered by SARS: | Customs and Excise Act No. 91 of 1964: Sections 3(1), 22, 47(9), 106, 107(2)(b) and 107(3) Customs and Excise Rules: 106.01, 106.02, 120.03 and 120.04 Tax Administration Act No. 28 of 2011: Sections 215 to 220 and 224 |
| Other Legislation: | Promotion Of Access To Information Act No.2 of 2000: All |

| TYPE OF REFERENCE | REFERENCE |
|----------------------------|--|
| | Promotion of Administrative Justice Act No.3 of 2000: Sections 3 and 5 Occupational Health and Safety Act 85 of 1993: All |
| International Instruments: | None |

3.2 Cross References

| DOCUMENT # | DOCUMENT TITLE |
|------------------|---|
| QMS-01 | Quality Management System Manual |
| SC-CC-24 | Internal Administrative Appeal - External Policy |
| SC-CC-26 | Alternative Dispute Resolution – External Policy |
| SE-GEN-08 | Special and Extra Attendance – External Policy |
| SE-REF-02 | Refunds – External Policy |
| SE-TDN-02 | Tariff Determination – External Policy |

4 DEFINITIONS AND ACRONYMS

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|-------------------------------|---|
| ACT | Customs and Excise Act, No. 91 of 1964 |
| ADR | Alternative Dispute Resolution |
| Commercial | Viable, saleable, profit marketable, business related industrial trade. |
| DAS | Duty At Source – Assessment of duty and levies at the time when fuel and other excisable products except wine are removed from the manufacturing warehouse. |
| Dispute | A disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or both the facts and the law. |
| Hazardous or Dangerous | Samples of solids, liquids, or gases that can harm people, other living organisms, property, or the environment. |
| High Risk Goods | Goods which are particularly susceptible to theft or dangerous goods. Examples of high risk goods are, but are not limited to: a) Electronic equipment; b) Firearms c) Chemicals; d) Alcoholic beverages; e) Cigarettes; f) Petroleum products; etc. |
| PAJA | Promotion of Administrative Justice Act |
| Policy | Used to convey the policy mandated by legislation and the sequential steps to be followed. |
| Sample | a) Articles which are representative of a particular category of goods already produced or are examples of goods of which the production is contemplated; the term does not include identical articles brought in by the same individual or sent to a single consignee, in such quantity that, taken as a whole, they no longer constitute samples under ordinary usage. b) Product used for trying and/or testing to see what it is like and/or how it works. |
| Taking of samples | Samples drawn by Excise or supplied by the client as proof of a tariff heading or other Excise procedures |

5 DOCUMENT MANAGEMENT

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| Policy Owner | Executive: Excise Audit Enforcement |
| Detail of change from previous revision | Provision has been made for the Promotion of Administrative Justice Act (PAJA) paragraph 2.6; The Standard has been changed to a Policy; Certain Q-codes under Cross References have been amended; Policy owner changed; Document Q-code changed from SE-FS-27 to SE-GEN-06; and Template Q-code changed from ECS-TM-03 to GC-TM-03. |
| Template number and revision | GC-TM-03 - Rev 9 |