

EXCISE

EXTERNAL POLICY

PROVISIONAL PAYMENTS

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1 SUMMARY OF MAIN POINTS

- a) The policy describes how Provisional Payments [(PPs) - DA 70] are normally lodged to secure duties, levies, **Tax** and / or **Value-Added Tax** (VAT) pending compliance of a condition by the client.
- b) Where a client contravenes the Act and a deposit is lodged in terms of Section 91, a PP is also made.
- c) This document **does not** cover:
 - i) **SARS Payment Rules as this is dealt with** in document **GEN-PAYM-01-G01**;
 - ii) **Customs Provisional Payments as this is dealt with in document SC-CF-25**;
 - iii) Provisional Payments accepted on the Traveller Processing System (PPS);
 - iv) Bonds as this is **dealt with** in document **SE-BON-02**; and
 - v) The Completion of the DA 70 as this is **dealt with** in document **SE-PP-03-M01**.

2 POLICY

2.1 Authentication

- a) Clients that change their banking details must verify them in person, with their respective supporting documents, at a Branch Office (B/O) for authentication.
- b) No refund or payment can be made if the banking details are not captured and authenticated on the relevant system. For the process of authentication, refer to SE-LR-02.

2.2 Users of provisional payment

- a) PPs are lodged in order to protect revenue, which is due, or may become due, to Excise pending compliance of a condition by the client.
- b) In cases of “possible underpayments” in duty / levy, **Tax** and / or VAT on Excisable products, clients are not required to sign the admission of guilt portion of a PP. An example of this would be where a client does not submit his monthly **Excise Duty and levy return (EXD 01)** and validating **Customs Clearance Declarations (CCD)**, but makes payment.
- c) Cash deposits on PPs in lieu of bonds are no longer accepted for surety for any new applications (refer to **SE-BON-02**).

2.3 Time periods allowed

- a) PPs must always indicate a specified period of time within which the conditions **must** be met.
- b) Unless a longer period is dictated by the nature of the matter, the period should rarely be more than three (3) months and then only with the permission of the Controller / Branch Manager and must never exceed twenty (20) months.
- c) These dates are set from the date of lodging of the **PP** as indicated in the table below:

PPs that can be required	Calendar days allowed
i) PP lodged pending production of any documents, e.g. invoice, transport document, proof of payment.	Fourteen (14) days
ii) PP lodged pending production of any document for the purpose of any other Act. A PP may not be lodged for permits or certificates.	Strictly fourteen (14) days
iii) PP lodged pending a decision to be made by the Commissioner regarding a suitable penalty (refer to SE-PEN-01).	Sixty (60) days
iv) PP lodged pending a value determination (VDN) to be made by the Commissioner.	Ninety (90) days
v) Pending production of literature or confirm correct tariff heading.	Fourteen (14) days

PPs that can be required	Calendar days allowed
vi) PP lodged pending payment in instalments	Depending on time period decided by Debt Management
vii) PP lodged for a penalty of late payment / late submission, under payment of Excise duty / levies, tax and / or VAT, etc.	Fourteen (14) days

2.4 Liquidation of PPs

- a) The liquidation of a PP will require that the client has a financial account at the specific Excise office or a national financial account (cash account).
- b) An application to liquidate a PP may be received by the Controller / Branch Manager:
 - i) From the client once the conditions under which the PP was lodged are complied with; or
 - ii) Where an Internal Administrative Appeal (IAA) Committee made a decision to refund a part or full amount of a PP deposited by a client; or
 - iii) A court ruling to refund the full or partial amount of the PP.
- c) The following PPs will only be liquidated once all instalments are paid up or court cases are finalised:
 - iv) PPs covering payments of schedules or amounts in instalments; or
 - v) PPs covering possible duties / levies and / or VAT and penalties pending the outcome of court cases or appeals.
- d) Clients must ensure that where PPs are to be liquidated the following principles are adhered to:
 - i) All conditions of the PP have been fully dealt with and or met; and
 - ii) All PPs must be liquidated in full before it becomes expired.
- e) Where a PP is financed and signed by the client, the client may apply in writing that if the PP concerned is liquidated, the amount refundable be paid to or into another person's account. The original application must be attached to the original PP.
- f) Except for the reasons mentioned in paragraph (d) above, if a PP is older than two (2) years such PP will not be liquidated and the money will not be refunded to the client as the payment is **forfeited** to the State.

2.5 Keeping of 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.

2.6 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, license or accreditation.

2.7 Promotion of Administrative Justice Act (PAJA)

- 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 (EO's) 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.

2.8 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 [SE-APL-02](#).
- b) Should clients be unhappy 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](#).

2.9 Lodge of PP

- a) The **client** must complete the prescribed PP (DA 70) and ensure all **boxes** are completed in accordance with the completion manual ([SE-PP-03-M01](#)) before submitting it to the Branch Office.

- b) When receiving the PP, the EO checks that it is properly completed, signed and verifies the period and amount for compliance.
- c) The EO must also ensure that PPs are correctly completed; a copy of the official Letter Of Intent (LOI), Letter of Demand (LOD) or any other supporting documents are produced and attached to the PP.
- d) EO's will therefore reject all PP applications which do not have these instructions attached; with the exception of cases where the client applies to make a PP for an acquittal; in which case the client must attach a worksheet indicating how the calculation of duties, levies, Tax and / or VAT, etc. was derived at for the final PP amount.
- e) If any mistakes are found with the completion of the PP, the PP will be rejected and the reason for rejection will be written on the back of the PP (the bottom right hand corner of the form would be folded over). The EO rejecting the PP will print his / her name and provide a contact number for any queries relating to the rejection.
- f) The PP must be handed back to the client, or be placed in the client's box.
- g) If correct, the EO will sign the PP in the box "for official use only" and complete the internal process.
- h) The 2nd copy of the PP and a copy of the CEB 01 which reflects the case number and PRN must be handed to the client, alternatively the documents are placed in the client's box as notification that payment **must** be made.
- i) The client must use the payment reference number (PRN) on the CEB 01 to make payment.
- j) The case number is the unique PP number, which must be used for liquidation purposes.
- k) The relevant Excise team must receive a processed copy from the client, which will serve as proof of payment.
- l) In instances where **an amended declaration** must be processed, the client must insert the case number of the PP on the **amended declaration** and submit to Excise for processing.

2.10 Monitor and manage compliance to PPs

- a) The onus rests upon the client to ensure that the lodged PP is followed up and liquidated within the time-period indicated on the PP.
- b) After receiving an application together with the proof of documents for the pending reason, e.g. literature etc. from the client, the EO will liquidate the PP.
- c) If the documents received from the client do not comply with the conditions under which the PP was lodged, the EO will reject it with a written reason, signature and name printed at the back of the PP to the client.
- d) A reminder letter of outstanding PPs will be forwarded to clients on a weekly basis indicating that the listed PPs were not liquidated within the stipulated periods.
- e) Clients must submit a letter indicating the reasons for the non-compliance of the conditions for liquidating PPs within the prescribed time to the Controller / Branch Manager.
- f) If it is found that a client consistently, or without good reason(s), fails to take steps to liquidate PPs, steps will be taken to ensure that such clients meet with their commitments in future. (The imposition of nominal, disciplinary penalties in terms of the Act would be a consideration).
- g) Should the client request an extension of the time-period stipulated on PPs, a written request to the effect must be made to the Controller / Branch Manager concerned before the time-period granted, expires.
- h) On receipt of the application, the circumstances as to why the time-period granted must be reviewed will be considered and each case will be treated on its own merits.

- i) Should the Controller / Branch Manager be satisfied with the merits of the case, written permission for time extension will be given to the client.
- j) A copy of the letter must be submitted at the time of requesting liquidation of a PP.

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 3(1), 40, 47(9), 55(2)(b), 57(A)(1)-(3),(5), 60, 64, 65, 76(4)(a), 76B, 80, 81, 83, 84, 87, 88, 91, 93, 98, 99, 101, 101A, 107 and 113 Customs and Excise Rules: Rules 40.01, 65.01 to 65.03 and 76.01 to 76.03.
Other Legislation:	Bill of Exchange Act No. 34 of 1964: All Interpretation Act No. 33 of 1957: Sections 2 and 4 Payments Association of South Africa (PASA): All Promotion of Administrative Justice Act No. 3 of 2000: Sections 3 and 5 Public Finance Management (PFMA) Act No. 1 of 1999: Sections 7, 12, 21, 29, 40(1a), 45, 76(2)(h), 51 and 55 Tax Administration Act No. 28 of 2011: All Treasury Regulations issued in terms of PFMA Act No. 1 of 1999: Part 5 paragraphs 11.3 and 15.4; Part 6 paragraphs 15.9 and 15.12; Part 7 paragraphs 17.2 and 18
International Instruments:	International Financial Reporting Standards (IFRS): All Generally Accepted Accounting Practice (GAAP): All Generally Recognised Accounting Practice (GRAP): All

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
EA-01-M01	eAccount for eFiling (Excise) – External Manual
GEN-PAYM-01-G01	SARS Payment Rules – External Guide
SC-CC-26	Alternative Dispute Resolution – External Policy
SE-APL-02	Internal Administrative Appeal – External Policy
SE-BON-02	Bonds – External Policy
SE-CON-02	Control and Clearance of bonded or inter-warehouse movements – External Policy
SE-LR-02	Licensing and Registration – External Policy
SE-PP-03-M01	Completion of DA 70 – External Manual
SE-REF-02	Refunds – External Policy

3.3 Quality Records

Number	Title
CEB 01	Customs / Excise Billing
DA 70	Application to make provisional payment

4 DEFINITIONS AND ACRONYMS

Act	Customs and Excise Act, No. 91 of 1964
ADR	Alternative Dispute Resolution
B/O	Branch Office
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 officers acting under the control or direction of any officer so designated by the Commissioner.
Declaration	a) Any declaration made to declare goods: <ul style="list-style-type: none"> i) Manufactured; or ii) Moved in bond.

eFiling	The South African Revenue Service (SARS) eFiling is a free, online process for the submission of returns, declarations and other related services. This free service allows taxpayers, tax practitioners and businesses to register free of charge and submit returns and declarations, make payments and perform a number of other interactions with SARS in a secure online environment.
EO	Excise Officer
EFT	Electronic Fund Transfer
Estreat	To enforce the forfeiture of a surety. When PPs become time expired after two (2) years from the date that the PP was lodged, the payment is forfeited to the State and can no longer be returned to the depositor.
Liquidation of a PP	a) The process where amounts deposited on PPs are finalised by: <ul style="list-style-type: none"> i) Refunding amounts to the depositor once the conditions of the PP are complied with; ii) Amounts are paid in on a DA 490 in favour of SARS.
PAJA	Promotion of Administrative Justice Act
PP	Provisional Payment
PRN	Payment Reference Number
SARS	South African Revenue Service
SSM	SARS Service Manager
VAT	Value Added Tax
Value-Added Tax	Value-added Tax is commonly known as VAT. VAT is an indirect tax on the consumption of goods and services in the economy. Revenue raised for government by requiring certain businesses to register and to charge VAT on the taxable supplies of goods and services. These businesses become vendors that act as the agent for government in collecting the VAT. VAT is charged at each stage of the production and distributing process and it is proportional to the price charged for the goods and services.

5 DOCUMENT MANAGEMENT

Policy Owner	Executive: Excise
Detail of change from previous revision	Various sub-paragraphs have been updated under paragraphs 1 and 2; Provision has been made for the Promotion of Administrative Justice Act (PAJA) under paragraph 2.7; 'Cross References' and 'Definitions and Acronyms' have been updated under paragraphs 3.2 and 4, respectively; Policy owner changed; Document Q-code changed from SE-FS-10 to SE-PP-02; Template Q-code changed from ECS-TM-03 to GC-TM-03; and Template update.
Template number and revision	GC-TM-03 - Rev 9