

EXCISE

EXTERNAL POLICY

DIPLOMATIC AND OTHER FOREIGN REPRESENTATIVES FUEL REFUNDS

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1 SUMMARY OF MAIN POINTS

- a) This policy applies to Diplomatic and other Foreign Representatives including the Department of International Relations and Cooperation (DIRCO).
- b) This **policy** does not cover the completion of the DA 90 Diplomatic and other foreign representatives' fuel refunds as this is dealt with in document **SE-REF-06-M01**.

2 POLICY

2.1 Responsibilities

- a) The South African Revenue Service (SARS) is responsible for the collection of the Excise duty and Fuel levy.
- b) The DIRCO certifies that the applicant is entitled to the privilege and is listed in the register maintained by its department in accordance with the provisions of the Diplomatic Immunities and Privileges Act No. 37 of 2001.
- c) Fuel refunds are refunded in terms of Rebate Item(s) 623.01, 623.02, 623.03 and / or 670.01 of Schedule 6 as approved and determined by the Director-General: DIRCO.
- d) **SARS administers the fuel levy claims on behalf of DIRCO.**

2.2 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 monetary penalties, as provided for in the Act.

2.3 Promotion of Administrative Justice Act (PAJA)

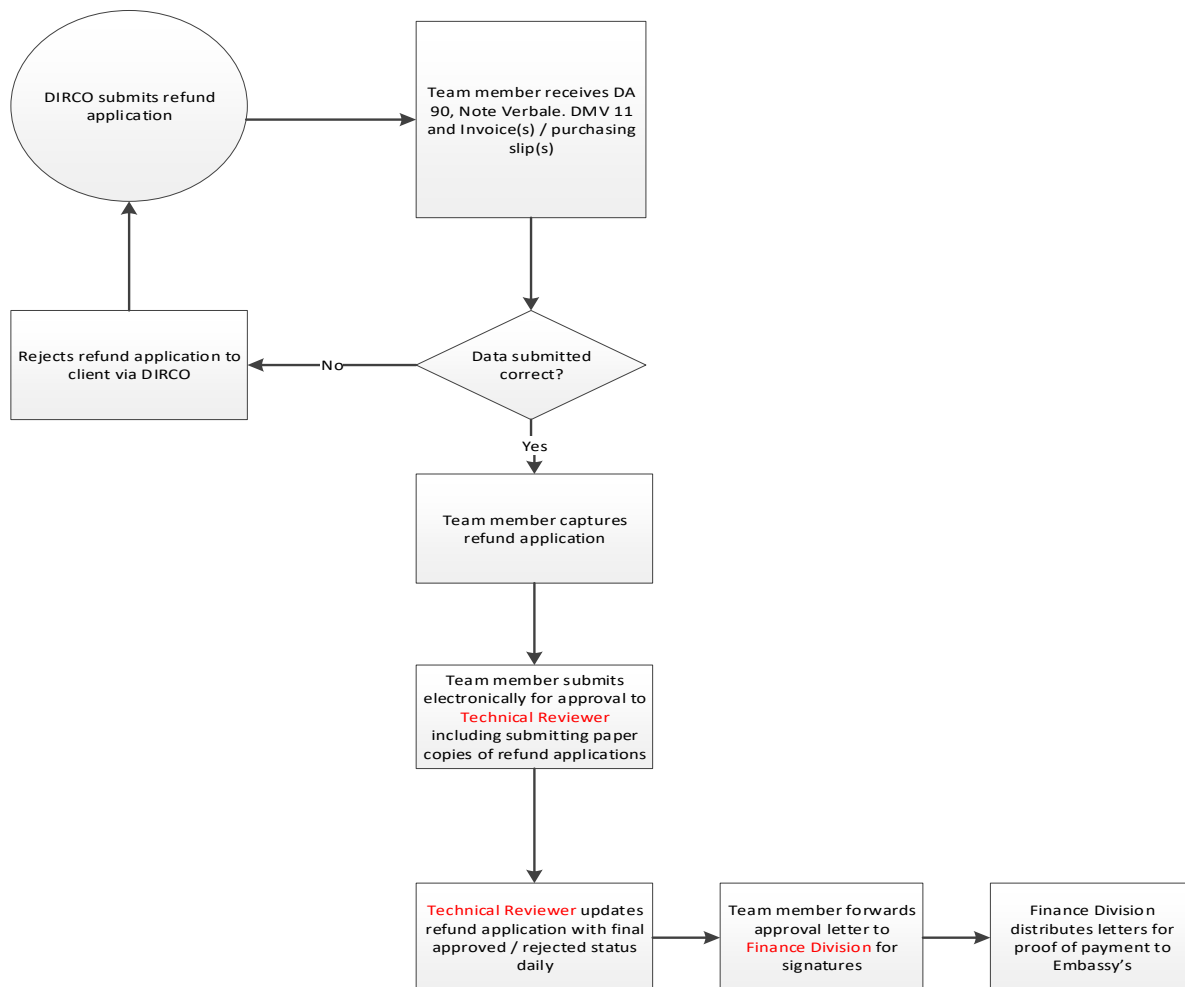
- a) **The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons. 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 SARS (Excise) to furnish written reasons for the action.
- g) SARS (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.

2.4 Appeal 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 not be in agreement 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.

2.5 Procedure



a) Submission

- i) DIRCO submits the refund application in terms of Rebate Items 623.01, 623.02, 623.03 and / or 670.01 on behalf of an accredited member of the Diplomatic community.
- ii) The following source documents must accompany such refund application:
 - A) DA 90;
 - B) **Note:** Verbale, requesting DIRCO to submit the refund application to the South African Revenue Service (SARS);
 - C) DMV 11 (Summary of claims from DIRCO); and
 - D) **Original fuel Invoice(s) / purchasing slip(s) endorsed with the fuel station name and contact details** to support all refund applications.

b) Status

- i) **Rejection** - If the refund application is incomplete and / or invalid, it will be rejected and returned to the Head of the Mission / Embassy, etc. via DIRCO, indicating the reasons on pages three (3) and / or four (4) box A2 on the DA 90.
- ii) **Approval**
 - A) After the refund application(s) has been approved, payment will be made.
 - B) Embassies will be informed via **registered** post as to the amount refunded.

3 RELATED INFORMATION

3.1 Legislation

| TYPE OF REFERENCE | REFERENCE |
|---|---|
| Legislation and Rules administered by SARS: | Customs and Excise Act. No. 91 of 1964: Section 75(14)(b)(ii) and 76B Customs and Excise Tariff: Schedule 6 |
| Other Legislation: | The Constitution of the Republic of South Africa, 1996: Section 33 Diplomatic Immunities and Privileges Act No. 37 of 2001: Section 9 National Road Traffic Act No. 93 of 1996: Section 4(3) Promotion of Administrative Justice Act No. 3 of 2000: Sections 3 and 5 |
| International Instruments: | None |

3.2 Cross References

| DOCUMENT # | DOCUMENT TITLE |
|---------------|--|
| SC-CC-26 | Alternative Dispute Resolution – External Policy |
| SE-APL-02 | Internal Administrative Appeal – External Policy |
| SE-REF-06-M01 | DA 90 Diplomatic and other foreign representatives fuel refunds – External Completion Manual |

3.3 Quality Records

| Number | Title |
|--------|--|
| DA 90 | Application for refund in respect of Excise duty and Fuel levy on motor fuel used by diplomatic and other foreign representatives in terms of item(s) 623.01, 623.02, 623.03 and 670.01 of Schedule 6. |

4 DEFINITIONS AND ACRONYMS

| | |
|---------------------|---|
| ADR | Alternative Dispute Resolution |
| DIRCO | Department of International Relations and Cooperation |
| Note Verbale | The official written form of communication with the Protocol Directorate. |
| PAJA | Promotion of Administrative Justice Act |
| Policy | Used to convey the policy mandated by legislation and the sequential steps to be followed. |
| SARS | South African Revenue Service |
| Schedule 6 | Refunds and Rebates of Excise Duties, Fuel Levy and Environmental Levy. |

5 DOCUMENT MANAGEMENT

| | |
|--|---|
| Policy Owner | Executive: Excise |
| Detail of change from previous revision | <p>The following have been updated / amended:</p> <ul style="list-style-type: none"> The External Standard changed to an External Policy; The Q-code under paragraph 1(b) has been corrected; Paragraph 2.1(d) has been inserted; Provision has been made for the Promotion of Administrative Justice Act (PAJA) under paragraph 2.3; The Q-code under paragraph 2.4(a) has been corrected; The process flow under paragraph 2.5 has been updated; Paragraphs 2.5(a) and (b) have been updated; 'Legislation' 'Cross References' and 'Definitions and Acronyms' have been updated under paragraphs 3.1, 3.2 and 4, respectively; Policy owner changed; Document Q-code changed from SE-AM-08 to SE-REF-05; Template Q-code changed from ECS-TM-03 to GC-TM-03; and Template update. |
| Template number and revision | GC-TM-03 - Rev 9 |