South African Revenue Service

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   Marina van Twisk

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PAYMENT OF DUTY, PENALTY AND INTEREST

METHODS OF PAYMENT

- Clarity was sought as to who can make payment by debit and credit card as contemplated in rule 3.1(e)

  - Rule 3.1will be amended by making it subject to rule 3.6 which restricts such payments to travellers and crew members at a place of entry or exit

CONDITIONS AND REQUIREMENTS FOR CASH PAYMENT

- Proposal to increase the maximum amount of cash that may be paid per transaction referred to in rule 3.2(2)

  - Not accepted. SARS policy is to limit cash payments

- Clarity was sought as to what would happen if electronic methods of payment are not available

  - The Commissioner may on good grounds shown extend the timeframe for payment – section 228 of the CDA read with section 908 of the CCA

PAYMENT OF DUTY, PENALTY AND INTEREST

CONDITIONS AND REQUIREMENTS FOR PAYMENT BY CHEQUE

- Proposals were made that SARS should remove the restriction that no cheque payment may be made by a person in respect of whom two cheques made out to SARS had been "referred to drawer" in the three years preceding the date of payment

  - Accepted

  - Rule 3.3(1)(b) will be amended to allow payment in the above circumstances if the person making payment can show good cause why the payment should be allowed

PAYMENT OF DUTY, PENALTY AND INTEREST

CONDITIONS AND REQUIREMENTS FOR PAYMENT BY CHEQUE

- Proposals were made that SARS should remove the restriction that the total amount for payment made by cheque by the same person per day is R50 000 - rule 3.3(1)(d)

  - Not accepted. SARS wide policy

CONDITIONS AND REQUIREMENTS FOR DEBIT OR CREDIT CARD PAYMENTS

- Proposals were received that acceptance of payment by card should not be restricted to the account holder, but that use and payment by authorised co-users of the card should also be accepted - rule 3.6

  - Accepted
  - The rule will be amended to provide for authorised users

PAYMENT OF DUTY, PENALTY AND INTEREST

QUALIFICATION CRITERIA FOR PAYMENT OF OUTSTANDING AMOUNTS IN INSTALMENTS

- Concerns were raised regarding the provision of security by an applicant- rule 3.9(2)

  - The requirement for security is not mandatory but rather discretionary
  - Section 690 prescribes forms of security

CONSIDERATION OF APPLICATIONS AND NOTIFICATIONS OF DECISIONS-PAYMENT IN INSTALMENTS

- Clarity was sought as to whether the "decision" taken in terms of rule 3.10 is subject to any process of reconsideration and appeal

  - Yes, Chapter 37 of the CCA will apply

PAYMENT OF DUTY, PENALTY AND INTEREST

INSTALMENT PAYMENT AGREEEMENTS

- Clarification was sought as to how instalment payments will be made - rule 3.11(5)

  - The methods of payment contemplated in rule 3.1 apply and consequently rule 3.11(5) will be deleted

NOTIFICATION BY CREDIT PROVIDERS OF VALUE OF DEBTORS' TITLE, RIGHT OR INTEREST IN ATTACHED GOODS

- Concerns were raised about whether the credit providers will be able to notify SARS when goods subject to a credit agreement are attached as they maybe unware of the attachment - rule 3.21

  - Section 54(4) places the obligation to notify SARS on the credit provider only if the credit provider becomes aware of the attachment

PAYMENT OF DUTY, PENALTY AND INTEREST

DUTY VS IMPORT TAX

- Proposals were received to replace the reference to "duty" in the CDA with "import tax"

  - Not accepted
  - CDA only relates to "duty"
  - "import tax" includes taxes that are not regulated by the CDA such as VAT

DEFERMENT OF PAYMENT OF DUTY

- Concerns were raised in respect of the deferment regime proposed in the rules

  - SARS has reviewed all the comments received
  - A new proposal is being finalised
  - SARS will communicate its amended proposals in a separate workshop

REFUNDS AND DRAWBACKS

APPLICATION FOR REFUND AND DRAWBACK (Section 67)

- Proposals were made that SARS should pay refunds to the persons who paid SARS – section 67

  - Payment will be made to the person that cleared the goods – the principal. Section 166(2) of the CCA is relevant if a customs broker submitted a clearance declaration on behalf of a registered or licensed person
  - An applicant (principal) for licensing or registration indicates on his or her application for licensing or registration the particulars of any person authorised to apply for any refund, as well as details of the bank account into which refunds must be paid by SARS The licensee or registered person (principal) must update his or her licensing or registration details whenever these details change
  - The CDA and the rules relating to applications for refunds and drawbacks will be amended to clarify the policy
  - Whether the payment was deferred or not will not influence the person to whom payment is made

REFUND AND DRAWBACK

TIME WITHIN WHICH APPLICATION MUST BE SUBMITTED (Section 69)

- Clarity was requested on the calculation of the period for submission of a refund application in instances of dispute resolution proceedings or court action – section 69(2)

  - Section 69 deals with the **timeframe for submission** of refund applications:
  - Normal timeframe for submission is **3 years** from date of clearance (in respect of duty and interest) or from date of payment (in respect of penalty and interest)
    BUT
  - In terms of subsection (2), if the entitlement to a refund or extent of the refund is **affected by dispute resolution proceedings or court action** or retrospective Tariff amendment –
    - Normal timeframe **does not apply**, and the applicant actually could have **more time** to submit application, i.e. – **180 calendar days AFTER** the date of the –
      - Decision in dispute resolution proceedings;
      - Court judgement; or
      - Publication of the amendment

REFUND AND DRAWBACK

- Another important issue connected to this, is the **limitation of refund applications** where a decision in dispute resolution proceedings or court action affects other goods that were not the subject of the proceedings or court action:

- Section 69(3) **limits the entitlement to apply** for a refund in the case of –
  - **penalties and interest on penalties** – applications for refunds can be submitted in respect of payments made during 3 years before the date of payment of the penalty that was the subject of the proceedings
    (i.e. "cut-off date" is a date 3 years **prior to** the **date of payment** of the penalty);

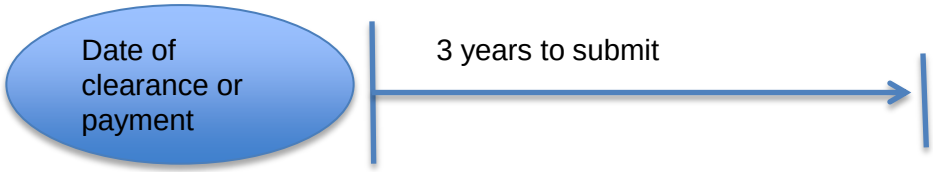
  - **duties and interest paid in respect of goods** – applications for refunds can be submitted in respect of goods cleared 3 years before the date of the determination or redetermination that was invalidated, changed or replaced by the decision or judgement
    (i.e. "cut-off date" for refund applications in respect of "other goods" is a date 3 years **prior to** the **date of "wrong" determination**)

- The time within which these applications must be submitted: **180 days after the date of decision or judgement**

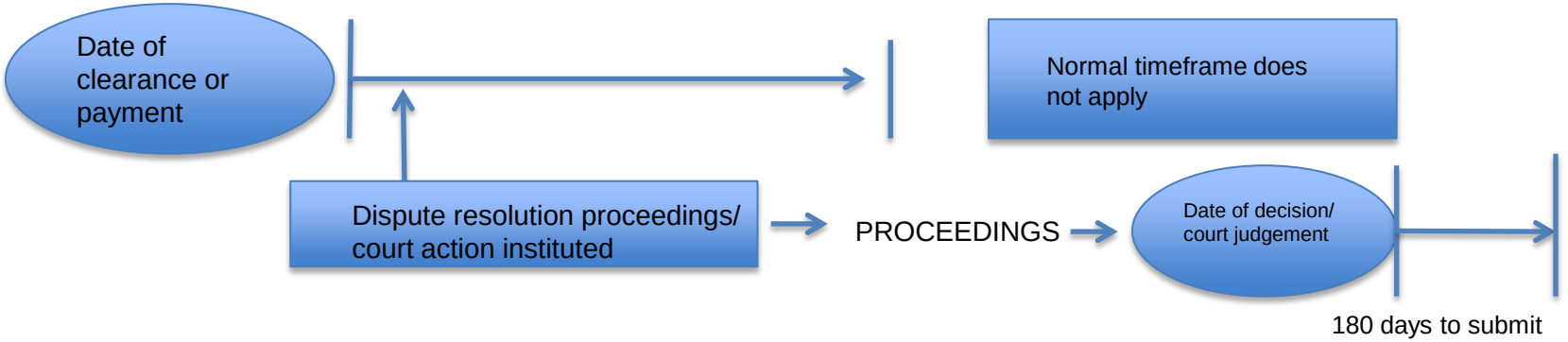
- With reference to the aforementioned clarification was sought as to whether the 3M judgement will apply
  - The 3M judgement applies for purposes of interpreting the relevant provisions of the 1964 Act – once the new Acts are in force, it will not directly apply

REFUND AND DRAWBACK

- **TIMEFRAMES FOR SUBMISSION OF REFUND APPLICATIONS**
- A. Normal timeframe for submission of applications



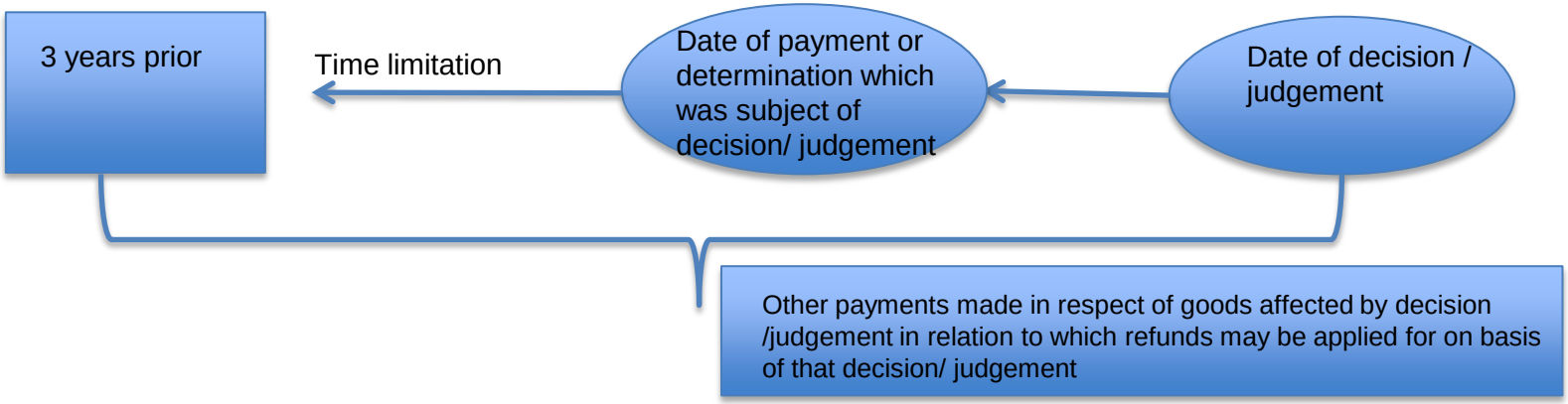
- B. In the case where you dispute or go to court



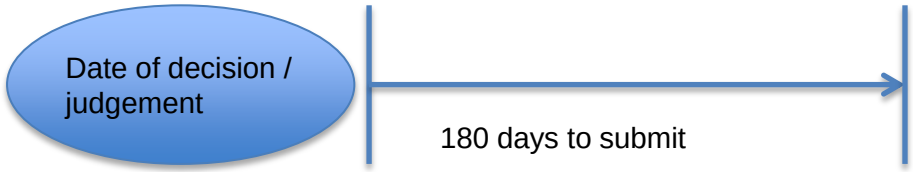
REFUND AND DRAWBACK

- **TIMEFRAMES FOR SUBMISSION OF REFUND APPLICATIONS**
- C. Where decision in B affects other goods or payments:

1. In respect of which goods or payments may refunds be applied for? (limitation of refunds)



- 2. When to submit?



REFUND AND DRAWBACK

TIMEFRAME FOR RE-SUBMISSION OF REJECTED APPLICATIONS (Section 71(2))

- Comments were received that the timeframe of five working days from the date of rejection is too short for resubmission of a rectified application – rule 4.5
  - Not accepted as rejection on technical grounds means that there are rectifiable shortcomings
  - It may take time to obtain a supporting document that was not submitted, but in such a case application can be made for extension in terms of section 908 of the CCA

- A proposal was made to insert a rule providing that a refund application that was submitted within the prescribed timeframe of three years from date of clearance cannot become time-expired on the following grounds:
  (i) When the customs authority raises a query or rejects the refund claim for a different reason than the properly substantiated reason for the claim;
  (ii) When the claim has been adequately substantiated to prove the claim, and the customs authority rejects the claim to correct one or more minor errors requiring the claim to be perfected;
  (iii) When the refund claim is refused by the customs authority and on appeal is found to have been valid

  - Not accepted. The first two scenarios are provided for under section 70(4)(c), i.e. "rejections on technical grounds". The corrected applications may in terms of section 71 be re-submitted within five working days from the date of rejection of the previous applications. Section 71(2) specifically provides that "the resubmitted application must be regarded to have been submitted on the date the previous application was submitted" for purposes of section 69

REFUND AND DRAWBACK

- Note that Customs may "invalidate" an application only on the grounds provided for in section 70(1)(a) – (e) and not arbitrarily. Officers are expected to check an application thoroughly from the outset to eliminate rejection thereof in a piecemeal fashion

- A rule amendment will be effected to spell out the consequences of failure to resubmit a corrected application within the prescribed timeframe:

  - On expiry of the timeframe (or the extended timeframe if an application in terms of section 908 was granted by Customs) the application will be electronically cancelled by SARS and the applicant notified accordingly

  - A new application can be submitted provided submission is within the applicable timeframe referred to in section 69

- Both an "invalidation" and "rejection on technical grounds" are decisions for purposes of Chapter 37 and as such appealable in terms of that Chapter. On institution of Chapter 37 proceedings a refund claim cannot become time-expired before the finalisation of such proceedings

- The third scenario of the proposal relates to a refusal. Where a person appealed against a decision relating to his refund claim and such appeal is upheld, possible prescription of such claim is irrelevant as such claim does not need to be resubmitted

REFUND AND DRAWBACK

SUBMISSION OF AMENDED CLEARANCE DECLARATIONS AS APPLICATIONS FOR REFUNDS (Section 68(2))

- Clarity was requested on what a "refund indicator code" is as referred to in rule 4.2(2)(a)
  - It is a code that indicates that the amended clearance declaration serves as an application for a refund. This is similar to rule 76.04(a) of the 1964 Act

SUPPORTING DOCUMENTS IN RESPECT OF APPLICATIONS FOR REFUNDS AND DRAWBACKS (Section 68(1)(c))

- Comments were received on the reference to "guidelines" in rule 4.3(1) as having no binding legal effect in terms of section 905(2) of the Customs Control Act, 2014
  - Accepted
  - Rule 4.3(1) will be deleted. Policy guidelines will still be provided for purposes of determining the evidence necessary for particular types of refund applications, but are not intended to limit the applicant in proving the claim
- Comments were received suggesting that Rule 4.3(2) be amended to the effect that only information or documents not already in possession of, or readily available to, SARS should be called for
  - Accepted. Rule 4.3(2)(a) and (c) will be deleted. A general rule will be added regarding supporting documents already in possession of SARS

NOTIFICATION OF INTENTION TO CLAIM DRAWBACK WHEN GOODS OR PRODUCTS ARE EXPORTED (Section 65(3))

- Comments were received suggesting that the submission of the export clearance declaration reflecting the relevant drawback item and CPC code should be regarded to be the notification – rule 4.4
  - Accepted. Rule will be amended

ASSESSMENT OF DUTY

WORKSHEET FOR PURPOSES OF SELF-ASSESSMENT OF DUTY

- There appears to be some confusion as to the customs code of the person clearing the goods

  - The person who submits the clearance is the person clearing the goods, except if a customs broker submits on behalf of a person. In such case that person is the person clearing the goods and not the customs broker - section 166

NOTIFICATION OF INACCURACIES IN SELF-ASSESSMENT

- Clarity was sought as to how the customs authority should be notified of inaccuracies in self-assessments - rule 5.2

  - The rules contemplated notifications through eFiling or by submission of an amended clearance declaration
  - The rules will be amended by retaining only the notification by submission of an amended clearance declaration, as the inaccuracy appears on the clearance declaration

TARIFF CLASSIFICATION OF GOODS

IMPLEMENTATION DATE OF RE-DETERMINATIONS (rule 6.3(e))

- Clarification was sought on the implementation date of a re-determination and a suggestion was made that it should be applied from the published date of the new re-determination

  - Section 103 clarifies the time limits from when tariff determination or re-determination must be applied
  - The suggestion is therefore not accepted

PUBLICATION OF DETERMINATIONS (rule 6.4(1))

- Proposal was received to make the publication of information relating to tariff determinations and re-determinations compulsory and without written permission

  - Not accepted. Not all publications of determinations require written consent. Written consent is only required where the publication will lead to disclosure of the information referred to in subrule (2)

- Proposal was received to amend rule 6.4(1)(a) to read: " …after 60 calendar days of the date of the determination in the interests of informed compliance"

  - Not accepted. This rule is consistent with the WCO recommendation. The Act empowers the publication of "…relevant details concerning tariff classification…" and in doing so this rule ensures that "…due account [is] being taken of confidential information."

TARIFF CLASSIFICATION OF GOODS

APPLICATION FOR TARIFF DETERMINATION (rule 6.5(2))

- Proposal was received to insert a provision to recognise a customs broker acting as representative and to not require the details in subrule (2)(b)

  - Accepted. This rule will be amended to reflect that the details do not have to be provided if the customs relationship was disclosed to the customs authority on the application for licensing or registration of the person clearing the goods

STAGED CONSIGMENTS (rule 6.5)

- Concern was raised that the number of consignments are difficult to determine upfront especially during big projects and a proposal was made to update SARS as and when information becomes available per contract (similar concerns in relation to shipping schedules and overall packing lists)
  - Not accepted
  - There appears to be a misunderstanding about the purpose of "staged consignments applications"
  - Staged consignments are allowed only in respect of unassembled or disassembled machines of section XVI (Chapters 84 and 85) of Schedule 1 Part 1 and if the mass of such machine exceeds 500 ton or is a measurement for shipping purposes exceeding 500 cubic metres

ORIGIN

PARTICULARS TO BE REFLECTED ON CERTIFICATES OF ORIGIN AND INVOICE DECLARATIONS (rule 8.5 and 8.6)

- Concern was raised about the requirement that the MRN must be reflected on certificates of origin and invoice declarations
  - Accepted
  - This rule will be amended by the deletion of the MRN requirement

APPLICATION FOR CERTIFICATION OF GOODS AS GOODS OF SOUTH AFRICAN ORIGIN (rule 8.17)

- Concern was raised about the practical application of the requirement to state the certificate number on the customs clearance declaration

  - The certificate number is available at time of clearance
  - The requirement is that the certificate number must be inserted on the customs clearance declaration
  - In order to obtain preferential tariff treatment in the importing country, the requirement is that the certificate must be certified **at time of importation** of the goods in that country

ORIGIN

APPLICATION FOR RETROSPECTIVE CERTIFICATION OF GOODS AS GOODS OF SOUTH AFRICAN ORIGIN (rule 8.18)

- Clarification was sought in respect of rule 8.18 as to why the retrospective certificate proving South African origin may only be submitted at the office having jurisdiction over the place of export

    - This rule will be amended to reflect that this application must be submitted to the officer responsible for origin administration at Head Office

APPLICATION FOR ORIGIN DETERMINATION BEFORE CLEARANCE OF GOODS (rule 8.23)

- Clarification was sought as to whether pro-forma invoices are now acceptable

    - The pro-forma invoice is required for purposes of assistance with consideration of origin determination and not for purposes of customs clearance

PREFERENTIAL TARIFF TREATMENT

DETERMINATION OF REQUIREMENTS FOR PREFERENTIAL TARIFF TREATMENT (rule 9.4)

- Clarification was sought as to whether application can be made by the exporter's agent and producer of the goods and in particular where the exporter is not located in the RSA

  - It is unclear what application is referred to
  - If registration application is referred to, the registration requirements in terms of rule 28.8(2)(a) apply

APPLICATION FOR CERTIFICATION OF GOODS OF SOUTH AFRICAN ORIGIN (rule 9.10)

- Clarity was sought as to why all documentation should be submitted again as it would have been submitted earlier in the process, and it was suggested that this requirement be deleted from rule 9.10

  - Not accepted
  - There must be a distinction drawn between "supported" and "accompanied"
  - "supported" means that the documentation should be ready but need not be submitted unless requested
  - "accompanied" means that it must be submitted with the application

PREFERENTIAL TARIFF TREATMENT

INCORPORATION OF AGOA LEGISLATIVE REQUIREMENTS (rule 9.14(3))

- Proposal was received that the customs authority must give certainty that all applicable legislative requirements referred to in rule 9.14(1) will be kept up to date, and it was suggested that rule 9.17 be amended to make provision for that

  - Not accepted
  - Rule 9.14 and rule 9.15 will be deleted
  - Exporters who wish to benefit from GSP's must ascertain what the applicable legislative requirements are

ADVANCE RULINGS

GENERAL COMMENTS

- A comment was received stating that the amendments effected to the Customs Control Act to align the dispute resolution processes with that of the Tax Administration Act should also apply to the Customs Duty Act

  - Agreed, all the consequential amendments will be effected once the content of Chapter 37 has been finalised

- A comment was received proposing that SARS should be obliged to issue a determination or ruling within a fixed time period e.g. 6 weeks from the date of receipt of the request. If necessary, SARS can notify the applicant prior to the expiry of the 6 week period that a further maximum period of 4 weeks will be required to finalise such, failing which the determination or ruling will be deemed successful

  - We do not use the rules as an instrument to regulate internal operational matters. Fair timeframes will be implemented for finalisation of determinations and rulings in standard operating procedures

- Various comments were received regarding advanced rulings, such as whether a registered/licensed person can apply for a ruling to ascertain the financial implications of importing a specific product

  - In terms of section 188 any person who is licensed or registered may apply for an advanced ruling, however, Chapter 10 will be implemented as soon as capacity exists

ADMINISTRATIVE PENALTIES

GENERAL COMMENTS

- A comment was made that all actions under Chapter 11 must be conducted in accordance with the Constitution of the Republic of South Africa and the Promotion of Administrative Justice Act (PAJA), specifically section 3 thereof, dealing with fair administrative action
    - We are cognisant of the Constitutional imperative and the requirements of PAJA. PAJA provides in section 3(2) that a fair administrative procedure depends on the circumstances of each case. Subsection (5) provides for an administrator to act in terms of a different procedure provided for in legislation which is fair in the circumstances
- A recommendation was received that a company involved in numerous import/export activities should be afforded more leniency. The repeated imposition of a prosecution avoidance penalty could result in the option of a prosecution avoidance penalty falling away and the company will be faced with criminal prosecution, which could be disastrous for the company especially from a reputational point of view. This will in turn result in an increase in prosecutions and an overburdening of the criminal courts. The criminal system is already under pressure
    - An agreement was reached with Trade that a more lenient approach will for a limited period, be adopted when the Acts are implemented. However, prosecution avoidance penalties offered by the customs authority for Category 1 and 2 offences are intended for the more serious offences. Our view is that repeated offences of this nature should be dealt with more harshly than non-prosecutable breaches

ADMINISTRATIVE PENALTIES

LISTED NON-PROSECUTABLE BREACHES

- A comment was made that the fixed amount penalties referred to in section 201(1) of the Duty Act are contrary to what was agreed with SCOF. It was suggested that Annexure A to the Duty Act should contain amounts consistent with what was agreed
    - The Duty Act was amended in last year's Taxation Laws Amendment Act to reflect the correct amounts
- A comment was made that the definition for non-prosecutable breaches should make reference to both the Customs Control Act and the Duty Act
    - This is not accepted as Chapter 39 of the Control Act deals with penalties in terms of the CCA and section 876(1) specifically deals with non-prosecutable breaches

ADMINISTRATIVE PENALTIES

LISTED NON-PROSECUTABLE BREACHES

- A comment was made that the late submission of a worksheet should be a category A breach as opposed to a category B breach
    - Failure to comply with a request by the customs authority i.t.o. section 82(1)(d) is a category 2 offence and therefore a prosecutable breach – See section 95(1)(a)(ii) & section 95(2)(b)
    - We agree the sanction is too harsh and will amend section 95 and the penalty table to provide for a category A non-prosecutable breach

- A comment was made that the various categories of breaches, i.e. A – D need to be defined in both the Customs Control Act and the Duty Act
    - This is not accepted as the categories indicate a progression of the fixed amount penalty

MISCELLANEOUS MATTERS

DEPARTURE FROM, CONDONATION OF NON-COMPLIANCE

- Clarity was sought as to when an e-mail is regarded as delivered
    - Section 23 of the Electronic Communications and Transactions Act, 2002, provides that in the absence of an agreement to the contrary, a data message is sent when it leaves the information system of the sender and received when it enters the information system of the receiver and is capable of being retrieved and processed

- A comment was made that it may not always be possible to submit an application before expiry of a timeframe. Would the importer/exporter then have to apply for condonation? How long will a decision take? If after the original due date, what will the consequence be if SARS is late in responding?

    - Yes, an application for condonation can be submitted where a timeframe has not been met
    - Decisions will be made within a reasonable time and depending on the circumstances
    - In principle the client would not be penalised if the application was submitted timeously and the decision was delayed

MISCELLANEOUS MATTERS

DEPARTURE FROM, CONDONATION OF NON-COMPLIANCE

- In relation to the criteria for determining when information is material for consideration or granting of applications, a recommendation was made that rule 13.9(c) should read "record of compliance with customs legislation" rather than "record of prudent behaviour"
    - This is accepted and the rule will be amended

OTHER COMMENTS

COMMENT	RESPONSE
Rule 3.1(2) erroneously makes reference to subrule (1)(e) instead of subrule(1)(d)	Reference will be corrected
Proposal was received to amend rule 6.2 by the addition of "…of the Customs Control Act"	Accepted
Proposal to delete rule 7.2(2)(d)(iii) and (iv) which provides that the notification to the customs authority of inaccuracies in value self determinations must include by whom the inaccuracy was discovered and the person responsible for the inaccuracy	Accepted
Concern was raised that rule 8.6(1) ends with "invoice". What happens when there is no invoice but maybe a packing list or despatch note etc.?	The rule will be amended to insert "… or other commercial document".
Incorrect reference is made in rule 8.22 to section 148 which refers to valuation determinations	Accepted. This rule will be amended to reflect the correct reference to section 177
Clarity was sought as to whether "serially numbered" in rule 9.13(2)(e) means sequential or incremental	The number series must be incremental or in sequential order and invoice numbers must not be repeated

COMMUNICATIONS

- SARS is creating a new webpage to update clients on developments and frequently asked questions around the new Customs legislation

- It is expected to go live by the end of this week

- You can access it by going to the SARS website www.sars.gov.za and then following one of these paths:
  - Customs home page > Legislative framework > New Customs Legislation update
  - Legal & Policy > Preparation of Legislation > New Customs Legislation update

THANK YOU

Questions?