

Government Gazette 14937

STATE PRESIDENT'S OFFICE

No. 1194. 9 July 1993

It is hereby notified that the Acting State President has assented to the following Act which is hereby published for general information-

NO. 98 OF 1993: CUSTOMS AND EXCISE AMENDMENT ACT, 1993.

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Customs and Excise Act, 1964, so as to further regulate the disclosure of information; to exclude certain dealers in excisable goods from licensing; to further regulate liability for duties and the entry of goods; to further regulate disposal of fuel levy; to further regulate the calculation of the value for excise duty purposes and the refunds of duties on distillate fuel; to extend and amend the provisions regarding offences; to prohibit the removal of detained goods; to further regulate the detention of goods for the purpose of other laws; to amend Schedule No. 1 to the said Act; to provide for the continuation of certain amendments of Schedules 1 to 6 to the said Act; and to effect certain textual alterations; and to provide for matters connected therewith.

(Afrikaans text signed by the Acting State President.)

(Assented to 28 June 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990 and section 1 of Act 105 of 1992

1. Section 4 of the principal Act is hereby amended by the insertion after subsection (3A) of the following subsection:

*"(3B) (a) Notwithstanding the provisions of subsection (3), the Commissioner may from time to time by notice in the Gazette publish a list of the names of persons in respect of whom a penalty of R10 000 or more has been imposed under section 91 for offences referred to in section 80, 82, 83, 84 or 86.*

*(b) Any list published in terms of subsection (1) shall specify-*

*(i) the name and address of any person whose name has been included in such list;*

(ii) *such particulars of the offence referred to in subsection (1) as the Commissioner may think fit;*

(iii) *the amount of the penalty imposed."*

Amendment of section 36A of Act 91 of 1964, as inserted by section 11 of Act 105 of 1969 and substituted by section 16 of Act 59 of 1990

2. Section 36A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every manufacturer of excisable goods specified in Section B of Part 2 of Schedule No. 1, and every owner of excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured for him partly or wholly from materials owned by such owner, **and every dealer of a class designated by the Commissioner, in pearls, precious and semi-precious stones, precious metals, metals clad with precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or metals clad with precious metals (excluding imitation jewellery)** shall license his premises as a special customs and excise warehouse for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 in terms of the provisions of this Act, and no such manufacturer or owner **or dealer** shall manufacture or deal in or with excisable goods specified in Section B of Part 2 of Schedule No. 1 unless he has so licensed his premises: Provided that the Commissioner may in his discretion and to the extent he deems fit, exempt, on the conditions imposed by him in each case, any such manufacturer or owner from the requirements of this Act."

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, sections 1 and 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 15 of Act 98 of 1980, section 3 of Act 89 of 1984, section 5 of Act 52 of 1986, section 13 of Act 84 of 1987 and section 21 of Act 59 of 1990

3. Section 44 of the principal Act is hereby amended by the substitution for subsection (8A) of the following subsection:

"(8A) Notwithstanding anything to the contrary in this Act contained, any person who owns, purchases, removes, receives, takes, delivers or deals with or in any imported goods or excisable goods or fuel levy goods which should have been duly entered, in terms of any agreement, **for home consumption** in any territory with the government of which such an agreement has been concluded under section 51, shall be liable for the duty on such goods brought into the Republic from such territory, and if the question arises whether such goods have been duly entered **for home consumption**, it shall be presumed, unless the contrary is proved, that such goods have not been so entered, and such goods shall be subject to the provisions of this Act as if they were goods which have, contrary to the provisions of subsection 47A(1), not been duly entered **for home consumption** in the Republic."

Substitution of section 47A of Act 91 of 1964, as inserted by section 7 of Act 101 of 1985 and amended by section 16 of Act 84 of 1987

4. The following section is hereby substituted for section 47A of the

principal Act:

"Prohibition of certain acts in respect of certain goods not duly entered

47A. (1) Subject to the provisions of this Act, no person shall remove, receive, take, deliver or deal with or in any imported or excisable goods or fuel levy goods **intended for home consumption** unless such goods have been duly entered **for home consumption**.

(2) If an officer discovers any imported or excisable goods or fuel levy goods which are alleged to have been duly entered, in terms of any agreement, **for home consumption** in any territory with the government of which the Republic has concluded such an agreement in terms of section 51, and he has reasonable cause to believe that such goods have not been so entered, he may detain such goods, and such goods shall thereupon be presumed, unless the contrary is proved, not to have been so entered and shall be subject to the provisions of this Act as if they were goods which have, contrary to the provisions of subsection (1), not been duly entered **for home consumption** in the Republic."

Substitution of sect on 47B of Act 91 of 1964, as inserted by section 17 of Act 84 of 1987

5. (1) The following section is hereby substituted for section 47B of the principal Act:

"Disposal of amounts of fuel levy

*47B. The Commissioner shall, notwithstanding the provisions of section 47(1)-*

- (a) pay monthly to every regional services council established under the Regional Services Councils Act, 1985 (Act No. 109 of 1985), and to every joint services board established under the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), such part as determined by the Minister, of a total amount of fuel levy, calculated at one cent per litre on the quantity of fuel levy goods entered for home consumption during the previous month;*
- (b) dispose of such part of the balance of the amount of any fuel levy paid in terms of the said section 47(1) as may be determined jointly by the Minister and any other Minister who may lay claim thereto by virtue of the provisions of any other law."*

(2) Subsection (1) shall come into operation on 1 July 1993.

Amendment of section 69 of Act 91 of 1964, as substituted by section 12 of Act 68 of 1989 and amended by section 1 of Act 111 of 1991 and section 3 of Act 105 of 1992

6. Section 69 of the principal Act is hereby amended-

- (a) by the substitution in subsection (1) for the words preceding the proviso of the following words:

"For the purpose of assessing the excise duty on any goods manufactured in the Republic and specified in Section B of Part 2 of Schedule No. 1, the value thereof shall, subject to the provisions of this section, be taken to be the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale, for consumption in the Republic, for purposes of trade in the principal markets of the Republic in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any merchant wholesaler in the Republic not deemed to be related as specified in section 66(2)(a) under fully competitive conditions, plus the cost of packing and packages and all other expenses incidental to placing the goods on **rail any vehicle** for delivery to the purchaser, plus any nonrebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 or any value-added tax payable on such goods:";

- (b) by the substitution in the said subsection (1) for subparagraph (iii) of paragraph (c) of the following subparagraph:

"(iii) the cost of packing or packages or any other expenses incidental to placing the goods on **rail any vehicle**."; and

- (c) by the substitution for subsection (3) of the following subsection:

"(3) If in the opinion of the Commissioner goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained in terms of subsection (1)(a) **(1)(b)** or (2), as the case may be, the Commissioner may determine a value,

which

shall, subject to the right of appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force."

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 24 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 8 of Act 93 of 1978, section 10 of Act 110 of 1979, section 15 of Act 98 of 1980, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990 and section 13 of Act 61 of 1992

7. Section 75 of the principal Act is hereby amended by the substitution for subsection (7A) of the following subsection:

"(7A) Any person to whom a refund of customs or excise duty or fuel levy has been granted on any distillate fuel in terms of the provisions of item 533.01 or 540.02 of Schedule No. 5 or item 609.05.10 or 640.03 of Schedule No. 6, as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for refund, shall pay on demand to the

Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof **as the Commissioner may in his discretion determine, during such period of two years as the Commissioner may determine**, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty or levy concerned."

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of Act 59 of 1990 and section 8 of Act 105 of 1992

8. Section 80 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for paragraph (j) of the following paragraph:

"(j) claims or receives any rebate, drawback, refund or payment or sets off any amount in terms of the provisions of section 77(a) to which he knows he is not entitled under this Act;" and

(b) by the substitution in the said subsection (1) for paragraph (o) of the following paragraph:

"(o) contravenes the provisions of section 18(13), 18A(9), 20(4)bis, 35A(4), 37(9), 60(1), 63(1), 75(7A), 75(19), 88(1)(bA), 113(8)(c) or 114(2A); or".

Insertion of section 82 in Act 91 of 1964

9. The following section is hereby inserted in the principal Act after section 81:

"Prohibition with regard to stamps

82. (1) Any person who without lawful excuse (the onus of proof of which shall be upon him) uses, or has under his control or in his possession, any stamp or makes available to another person any stamp-

(a) which is used in the Office under the authority of the Commissioner;

(b) the imprint of which is identical to or resembles the imprint of a stamp referred to in paragraph (a) or of any stamp used by a governmental authority in a foreign country under any law of such country relating to customs or excise or to the import or export of goods,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who without lawful excuse (the onus of proof of which shall be upon him) manufactures or has in his possession or under his control any stamp the imprint of which depicts the name of a company, firm or other business entity in a foreign country, or any signs or letters which could be reasonably understood to be a reference to such

*company, firm or business entity, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment."*

Amendment of section 88 of Act 91 of 1964, as amended by section 12 of Act 85 of 1968, section 30 of Act 112 of 1977, section 15 of Act 98 of 1980, section 28 of Act 84 of 1987 and section 15 of Act 68 of 1989

10. Section 88 of the principal Act is hereby amended by the insertion after paragraph (b) of subsection (1) of the following paragraph:

*"(bA) No person shall remove any ship, vehicle, plant, material or goods from any place where it was so detained or from a place of security determined by an officer, magistrate or member of the police force."*

Amendment of section 92 of Act 91 of 1964

11. Section 92 of the principal Act is hereby amended-

(a) by the substitution for the proviso of the following proviso:

*"Provided that one-third of any such fine, penalty or proceeds shall be paid into a separate fund administered by the Commissioner, from which he may-*

- (a) pay to any officer an award, whether or not related to the imposition of the fine, penalty or seizure, which may, during a financial year, not exceed 20 per cent of the annual salary of such officer;*
- (b) pay an award to any person, including an officer, by whose means or information the fine or penalty or forfeiture was imposed or the seizure made;*
- (c) use any money in such fund, for the improvement of the benefits of officers generally or specially, for the purpose of establishing and maintaining intelligence systems and other special facilities and functions for detecting, preventing, deterring and combating customs fraud and for such other purposes to improve the effectiveness and efficiency of the administration of customs and excise services as the Commissioner may deem necessary."; and*

(b) by the addition of the following subsections, the existing section becoming subsection (1):

*"(2) The Commissioner shall keep full and proper records of such fund, which shall be subject to audit by the Auditor-General.*

*(3) The Commissioner shall pay at the end of any financial year any amount in excess of R5 million in such fund into the State I Revenue Fund."*

Amendment of section 113 of Act 91 of 1964, as amended by section 17 Of Act 95 Of 1965, section 14 Of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974, section 25 of Act 86 of 1982, section 7 of Act 89 of 1983, section 31 Of Act 84 of 1987, section 17 of Act 68 of 1989 and section 14 of Act 105 of 1992

12. Section 113 of the principal Act is hereby amended-

(a) by the deletion in subsection (1) of paragraph (k);

(b) by the substitution for subsection (8) of the following subsection:

*"(8) (a) An officer may, for the purposes of any law other than this Act or at the request of a member of the police force or the authority administering such law, detain any goods while such goods are under customs control.*

*(b) Such goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer.*

*(c) No person shall remove any goods from any place where they were so detained or from a place of security determined by an officer.*

**(c) (d) Any goods so detained may be released by the Commissioner to the South African Police, department of State the authority administering such law or person concerned the importer."**; and

(c) by the deletion of subsection (10).

Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 Of Act 57 of 1966, section 2 Of Act 96 of 1967, section 22 Of Act 85 of 1968, section 37 Of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 Of Act 89 of 1971, section 12 Of Act 103 of 1972, section 6 Of Act 6X of 1973, section 3 Of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 Of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 198X, section 19 of Act 6X of 1989, section 40 Of Act 59 of 1990, section 3 Of Act 111 of 1991 and section 15 of Act 105 of 1992

13. (1) Schedule No. 1 to the principal Act is hereby amended to the extent set out in the Schedule to this Act.

(2) Subject to the provisions of section 58(1) of the principal Act, this section shall be deemed to have come into operation on 17 March 1993.

Continuation of certain amendments of Schedules Nos. 1 to 6 to Act 91 of 1964

14. (1) Every amendment of Schedules Nos. 1 to 6 to the principal Act made under section 48(1) and (2), section 48A(1), section 56(1) or section 75(15) of the principal Act prior to 29 January 1993 shall not lapse by virtue of the provisions of section 48(6), 48A(2), 56(3) or 75(16) of the principal Act.

(2) The amendment of Part 5 of Schedule No. 1 to the principal Act made under section 48(1) and (2) of the principal Act by Government Notice No. R.506 of 26 March 1993, shall not lapse by virtue of the provisions of section 48(6) of the principal Act.

Short title

15. This Act shall be called the Customs and Excise Amendment Act, 1993.

Schedule

AMENDMENTS TO SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE ACT, 1964

Tariff Item	Tariff Heading	Description	Rate of duty	
			Excise	Customs
104.00		By the substitution for tariff item 104.00 of the following:		
"104.00		PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO		
104.01	19.01	MALT EXTRACT; FOOD PREPARATIONS OF FLOUR, MEAL, STARCH OR MALT EXTRACT, NOT CONTAINING COCOA POWDER OR CONTAINING COCOA POWDER IN A PROPORTION, BY MASS, OF LESS THAN 50 PERCENT, NOT ELSEWHERE SPECIFIED OR INCLUDED; FOOD PREPARATIONS OF GOODS OF HEADINGS NOS. 04.01 TO 04.04, NOT CONTAINING COCOA POWDER OR CONTAINING COCOA POWDER IN A PROPORTION, BY MASS, OF LESS THAN 10 PER CENT, NOT ELSEWHERE SPECIFIED OR INCLUDED:		
	.10	Preparations based on sorghum flour, put up for making beverages	15c/kg	
104.05	22.01	WATERS, INCLUDING NATURAL OR ARTIFICIAL MINERAL WATERS AND AERATED WATERS, NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER NOR FLAVOURED; ICE AND SNOW:		
	22.02	WATERS, INCLUDING MINERAL WATERS AND AERATED WATERS, CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED, AND OTHER NON-ALCOHOLIC BEVERAGES (EXCLUDING FRUIT OR VEGETABLE JUICES OF HEADING NO. 20.09);		
	.10	Mineral waters, including spa waters and aerated waters, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state)	12,36c/l	13,42c/l
	.20	Lemonade and flavoured mineral waters,		

	including flavoured spa and aerated waters, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state)	12,36c/l	13,42c/l
.30	Non-alcoholic beverages not elsewhere specified or included in this tariff item, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state)	12,36c/l	13,42c/l
104.10 22.03	BEER MADE FROM MALT:		
.10	Of a relative density before fermentation not exceeding 1 040deg	6 249c/ 100l	6 248c/ 100l
	Plus a suspended duty of:		
	(i) In operation	Nil	Nil
	(ii) Maximum rate	275c/ 100l	275c/ 100l
.20	Of a relative density before fermentation exceeding 1 040deg but not exceeding 1 050deg, which is cleared ex any customs and excise manufacturing warehouse during any financial year, or which is imported into the Republic, or which is illicit beer:		
	(1) On the first 4 500 000l or any quantity less than 4 500 000l so cleared during a financial year	6 524c/ 100l	-
	(2) On the quantity so cleared during a financial year which is more than 4 500 000l but not exceeding 9 000 000l	6 656c/ 100l	-
	(3) On the quantity so cleared during a financial year which is more than 9 000 000l but not exceeding 18 000 000l	6 788c/ 100l	-
	(4) On the quantity so cleared during a financial year which is more than 18 000 000l but not exceeding 27 000 000l	6 920c/ 100l	-
	(5) On the quantity so cleared during a financial year which is more than 27 000 000l but not exceeding	7 052c/ 100l	-

		36 000 0001		
		(6) On the quantity so cleared during a financial year 7 which is more than 36 000 0001	184c/ 1001	-
		(7) If duty is paid on illicit beer	7 184c/ 1001	
		(8) If imported	-	6 502c/ 1001
.30		Of a relative density before fermentation exceeding 1 050deg	7 283c/ 1001	6 722c/ 1001
		Plus, for every degree of relative density before fermentation exceeding 1 080deg	22c/1001	22c/1001
104.15	22.04	WINE OF FRESH GRAPES, INCLUDING FORTIFIED WINES, GRAPE MUST OTHER THAN THAT OF HEADING NO. 20.09;		
	22.05	VERMOUTHS AND OTHER WINE OF FRESH GRAPES FLAVOURED WITH PLANTS OR AROMATIC SUBSTANCES;		
	22.06	OTHER FERMENTED BEVERAGES (FOR EXAMPLE, CIDER, PERRY, MEAD):		
.05		Sorghum beer (excluding beer made from preparations based on sorghum flour)	300c/1001	300c/1001
.10		Unfortified still wine	2 300c/ 1001	2 300c/ 1001
.40		Fortified still wine	6 168c/ 1001	6 168c/ 1001
.50		Other still fermented beverages, unfortified	2 700c/ 1001	2 700c/ 1001
.60		Other still fermented beverages, fortified	6 702c/ 1001	6 702c/ 1001
.70		Sparkling wine	7 774c/ 1001	7 774c/ 1001
.80		Other fermented beverages (excluding sorghum beer)	8 404c/ 1001	8 404c/ 1001
104.20	22.07	UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF 80 PER CENT VOLUME OR HIGHER; ETHYL ALCOHOL AND OTHER SPIRITS, DENATURED,		

OF ANY STRENGTH;

22.08	UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF LESS THAN 80 PER CENT VOLUME; SPIRITS, LIQUEURS AND OTHER SPIRITUOUS BEVERAGES; COMPOUND ALCOHOLIC PREPARATIONS OF A KIND USED FOR THE MANUFACTURE OF BEVERAGES:		
.10	Wine spirits, manufactured in the Republic by the distillation of wine	163 838c/ - 100l of absolute alcohol	
.15	Spirits, manufactured in the Republic by the distillation of any sugar cane product	173 801c/ - 100l of absolute alcohol	
.25	Spirits, manufactured in the Republic by the distillation of any grain product	178 308c/ - 100l of absolute alcohol	
.29	Other spirits, manufactured in the Republic	168 275c/ 100l of absolute alcohol	
.60	Imported spirits of any nature, including spirits in imported spirituous beverages (excluding liqueurs, cordials and similar spirituous beverages containing added sugar) and in compound alcoholic preparations of an alcoholic strength exceeding 1,713 per cent alcohol by volume	-	154 225c/ 100l of absolute alcohol or 67 174c/ 100l
.70	Spirits of any nature in imported liqueurs, cordials and similar spirituous beverages containing added sugar, with or without flavouring substances	-	154 225c/ 100l of absolute alcohol
104.30	24.02 CIGARS, CHEROOTS, CIGARILLOS AND CIGARETTES, OF TOBACCO OR OF TOBACCO SUBSTITUTES;		
	24.03 OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES, "HOMOGENISED" OR "RECONSTITUTED" TOBACCO EXTRACTS AND ESSENCES:		

.10	Cigars	230c/kg net	252c/kg net
.20	Cigarettes	28,45c/10 cigarettes	28,45c/10 cigarettes
	Plus, in respect of cigarettes the mass of the tobacco of which exceeds 1,5kg 1 000 cigarettes	1 264c/kg tobacco content	1 264c/kg tobacco content
.30	Cigarette tobacco	35,5c/ 50g or fraction thereof plus 213c/kg tobacco	35,5c/ 50g or fraction thereof plus 213c/kg tobacco
	Plus a suspended duty of:		
	(i) In operation	Nil	Nil
	(ii) Maximum rate	73c/kg tobacco	73c/kg tobacco
.40	Pipe tobacco in immediate packings of a content of less than 5kg	260c/kg net	260c/kg net
.50	Pipe tobacco in immediate packings of a content of not less than 5kg	242c/kg net	242c/kg net "