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GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. R. 672 **30 July 2010**

CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES (DAR/73)

Under sections 38A and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R. 1874 of 8 December 1995 are amended to the extent set out in the Schedule hereto.



GEORGE NGAKANE VIRGIL MAGASHULA
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

(a) By the insertion in Chapter V after rule 38.16*(d)* of the following rules:

"RULES FOR SECTION 38A OF THE ACT

Definitions

38A.01 For the purposes of these rules, tariff heading 99.92 of Part 1 of Schedule No. 1 and any form to which these rules relate, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and unless otherwise specified or the context otherwise indicates–

"bonded goods" means any–

(a) imported goods, whether liable to duty or free of duty; or

(b) dutiable locally-produced goods,

that are entered for storage in accordance with the provisions of the Act for storage and stored in a licensed special customs and excise

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warehouse for supply as stores and spares and equipment to foreign-going ships and aircraft;

"**equipment**" means goods, excluding stores and spares, and tools temporarily imported, of a removable but not a consumable nature, for use on board a foreign-going ship or aircraft during voyage, including survival equipment, accessories such as lifeboats, life saving devices, furniture, apparel for ship or aircraft crew and similar goods;

"**exporter**" means an exporter who supplies stores or spares and equipment to foreign-going ships or aircraft and who is accredited as contemplated in section 64E;

"**foreign going aircraft**" means–

(a) an aircraft at an airport, landing strip or other place in the Republic if that aircraft–

(i) has arrived at that place in the course of a voyage from outside the common customs area to a destination or destinations inside the Republic, whether that place is that destination or one of those destinations or a stopover on its way to that or any of those destinations and is scheduled to depart from the Republic to a final destination outside the common customs area; or

(ii) is scheduled to depart from that place in the course of a voyage to a final destination outside the common customs area, whether that place is its place of departure to that final destination or a stopover or one of several stopovers in the Republic or the common customs area from where it departs in the course of that voyage;

(b) an aircraft in the airspace above the Republic on a voyage referred to in paragraph *(a)*(i) or (ii); or

(c) an aircraft on a voyage from a place outside the Republic or from any place in any other country in the common customs area to a final destination outside the common customs area–

(i) passing through the airspace above the Republic; or

(ii) making a stopover at any airport, landing strip or other place in the Republic; and

(d) an aircraft contemplated in paragraph *(a)*, *(b)* or *(c)* that is used in the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration;

"foreign going ship" means–

(a) a ship at a seaport, harbour or other place in the Republic if that ship–

(i) has arrived at that place in the course of a voyage from outside the common customs area to a destination or destinations inside the Republic, whether that place is that destination or one of those destinations or a stopover on its way to that or any of those destinations and is scheduled to depart from the Republic to a final destination outside the common customs area; or

(ii) is scheduled to depart from that place in the course of a voyage to a final destination outside the common customs area, whether that place is its place of departure to that final destination or a stopover or one of several stopovers in the Republic or the common customs area from where it departs in the course of that voyage;

(b) a ship in the territorial waters of the Republic on a voyage referred to in paragraph *(a)*(i) or (ii); or

(c) a ship on a voyage from a place outside the Republic or from any other country in the common customs area to a final destination outside the common customs area–

(i) passing through the territorial waters of the Republic; or

(ii) making a stopover at any place in the Republic; and

(d) a ship contemplated in paragraph *(a)*, *(b)* or *(c)* that is used in the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration;

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"goods in free circulation" means goods which are not subject to any customs or excise procedure contemplated in the Act;

"licensee" means a licensee of a special customs and excise storage warehouse licensed for the storage of goods for supply as stores or spares and equipment to foreign-going ships or aircraft and who is accredited as contemplated in section 64E;

"stores" means any bonded goods and goods in free circulation taken on board a foreign-going ship or foreign-going aircraft intended to be used–

(a) by travellers and crew on board the ship, or aircraft during that voyage;

(b) as duty and tax free items for sale on board the ship, or aircraft; or

(c) for the operation and maintenance of the ship, or aircraft on or during that voyage but excluding spares and equipment and fuel levy goods;

"spares" means parts which are to be used in the course of repair or maintenance as replacements on a foreign-going ship or aircraft ;

"the Act" includes any provisions of "this Act" as defined in the Customs and Excise Act, 1964 (Act No. 91 of 1964);

"VAT" means value-added tax leviable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);

"VAT Act" means the Value-Added Tax Act, 1991.

Application of provisions

38A.02 *(a)* These rules apply to bonded goods and where specified, goods in free circulation supplied by a licensee or exporter, as the case may be, to foreign-going ships and aircraft as stores or spares and equipment as contemplated in section 38A.

(b) Any goods not regarded as stores, spares and equipment as contemplated in section 38A and these rules must be entered on form SAD 500 before delivery to foreign-going ships or aircraft.

Application for a licence, registration in terms of section 101A and for accreditation

38A.03 For the purposes of section 38A, application for–

(a) a special customs and excise storage warehouse; or

(b) registration as a registered user for the purposes of electronic communication in accordance with section 101A and the rules made thereunder, must be made on form DA 185 and the relevant annexure; or

(c) accredited client status as contemplated in section 64E and the rules made thereunder, must be made on form DA 186.

Storage of imported goods free of duty

38A.04 A licensee may store imported goods free of duty in a licensed special customs and excise storage warehouse for supply as stores or spares and equipment to foreign-going ships and aircraft.

Persons who may issue a dispatch and delivery note

38A.05 Dispatch and delivery notes may only be issued by a licensee or exporter referred to in section 38A(2) for supplying stores or spares and equipment to foreign-going ships and aircraft.

Contents of dispatch and delivery note

38A.06 Dispatch and delivery notes shall be serially numbered and dated and shall include at least–

(a) in respect of–

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(i) an exporter, the registered name and physical address, customs and excise client number and VAT registration number; or

(ii) a licensee, the licensed name, physical address and number of the special customs and excise storage warehouse, customs and excise client number and VAT registration number;

(b) aircraft registration number, vessel identification number, vessel name, flight or voyage number (whichever is applicable);

(c) a true and correct description of the goods with a clear distinction made between bonded goods and goods in free circulation;

(d) the exact quantity of goods;

(e) the date of removal of the goods; and

(f) provision for–

(i) acknowledgement of receipt of the goods;

(ii) a statement of the exact quantity and the full description of any goods not received or not accepted and returned; and

(iii) a declaration by the master, pilot or duly authorised officer that the particulars regarding goods received or not accepted and returned are true and correct.

Delivery of dispatch and delivery notes to the Controller

38A.07 A copy of the dispatch and delivery note shall be submitted electronically by e-mail by the licensee or exporter to the Controller at least one hour prior to the supply of goods to a foreign-going ship or aircraft.

Dispatch and delivery notes to accompany supply of goods and amendment or cancellation of a dispatch and delivery note

38A.08 *(a)* (i) Goods supplied as stores or spares and equipment shall be accompanied by the original and a duplicate of the dispatch and delivery note;

(ii) the provision on the original and duplicate dispatch and delivery note referred to in rule 38A.06*(f)* must be duly completed by the master, pilot or duly authorised officer; and

(iii) the completed original must be kept by the licensee or exporter, as may be applicable, and the completed duplicate by the master or pilot.

(b) Any dispatch and delivery note–

(i) of which the acknowledgement of receipt reflects that any goods entered thereon have not been accepted or delivered, shall be regarded as amended to that extent; and

(ii) not acted upon, must be cancelled by drawing a diagonal line through the original and any copies and endorsing "cancelled" and the reasons for cancellation thereon.

(c) The full particulars of such amendment or cancellation must, as soon as reasonably possible, be submitted electronically by e-mail, to the Controller.

Return of stores, spares and equipment

38A.09 *(a)* The licensee or exporter must issue a receipt in a form approved by the Commissioner in respect of any goods returned.

(b) The receipt must contain at least–

(i) the dispatch and delivery note number and date;

(ii) the particulars stated in rule 38A.06*(b)*, *(c)* and *(d)*;

(iii) the reason for return of the goods;

(iv) provision for a declaration by the master, pilot or duly authorised officer that the particulars are true and correct and acknowledgement by the licensee or exporter of receipt of the goods.

(c) The licensee or exporter must in respect of such a return -

(i) without delay–

(aa) advise the Controller electronically by e-mail; and

(bb) make appropriate adjustments to stock records;

(ii) keep a separate account of goods returned; and

(iii) in a supporting statement to the validating bill of entry referred to in rule 38A.10 reflect the adjustments to the quantity and export value of all goods returned.

Subsequent validating clearance

Time of entry

38A.10 In respect of each foreign-going ship or aircraft supplied with stores or spares and equipment, a licensee or exporter must submit electronically to the Controller a form SAD 500 for the purposes of the validating bill of entry export as contemplated in section 38A(2)*(c)* accounting for each dispatch and delivery note issued in the case of–

(a) (i) stores supplied for use by travellers or crew on board the foreign-going ship or aircraft during that voyage; and

(ii) spares and equipment supplied for use in the operation or maintenance of that ship or aircraft on or during that voyage,

within seven official working days after the date of departure of that ship or aircraft;

(b) stores supplied for sale on board a foreign-going ship or aircraft which is scheduled to return to the Republic, within seven official working days after the return of that ship or aircraft;

(c) a ship or aircraft contemplated in paragraph *(b)* not returning within a period of 30 days after the date of departure due to *vis major* or other circumstances the Commissioner considers exceptional, within seven official working days after expiry of that period.

Declaration of stores, spares and equipment under Part 1 of Schedule No. 1 on the validating bill of entry

38A.11 *(a)* Stores, spares and equipment supplied to a foreign-going ship or aircraft by issuing of a dispatch and delivery note must be declared by the licensee or exporter under Part 1 of Schedule No. 1 on the validating bill of entry as follows:

(i) Goods in free circulation supplied as stores must be declared under the appropriate heading in Chapter 99 in accordance with the Notes to the Chapter; and

(ii) all other stores, spares and equipment, including bonded goods, must be declared under the appropriate subheading of Part 1 of Schedule No. 1.

Keeping of books accounts and documents

38A.12 *(a)* For the purposes of section 101A and the rules made thereunder, and notwithstanding anything to the contrary in any rule contained, every licensee or exporter must–

(i) create accounting records that utilise information prepared in a manner consistent with generally accepted accounting principles appropriate for the activities to which these rules relate;

(ii) keep proper books, accounts and documents and any data created by a computer of all transactions relating

to the activities contemplated in section 38A and these rules, for a period of five years calculated from the end of the calendar year in which any such document was created, lodged or required in respect of any customs procedure regulating those activities;

(iii) include in such books, accounts and documents any relevant requirements prescribed in any provision of this Act in respect of a special customs and excise storage warehouse and the export of goods; and

(iv) produce such books, accounts , documents and data on demand at any reasonable time and render such returns or submit such particulars in connection with the transactions contemplated in subparagraph (ii).

(b) Such books, accounts, documents and data must include, as applicable–

(i) proper and separate accounting records of each class or kind of goods in which is recorded daily goods obtained, stored and supplied to or returned from any foreign-going ship or aircraft;

(ii) copies of all documents relating to goods obtained, all dispatch and delivery notes in numerical order, goods returned and payments received and made;

(iii) copies of forms SAD 500 and supporting documents contemplated in rules 38A.09 and 38A.10; and

(iv) any other documents the Commissioner may specify.

Implementation arrangements

38A.13 After a period of 90 days from the date these rules are published, no person, except a licensee of a special customs and excise warehouse, shall be allowed to deal with any bonded goods as contemplated in these rules.

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