

DRAFT

SOUTH AFRICAN REVENUE SERVICE

No. R.

2020

GENERAL EXPLANATORY NOTE:

[] Words that are between square brackets and in bold typeface, indicate deletions from the existing rules

____ Words that are underlined with a solid line, indicate insertions in the existing rules

CUSTOMS AND EXCISE ACT, 1964

AMENDMENT OF RULES

Under sections 19A, 54AA, 105 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.

EDWARD CHRISTIAN KIESWETTER

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Insertion of rule

1. The following rule is hereby inserted in the Rules under the Customs and Excise Act, 1964 after rule 19A.10:

“Special provisions in respect of payment of excise duty on certain goods during period commencing 1 May 2020 and ending 30 June 2020

- 19A.11** (a) This rule applies in respect of tobacco products, beer, wine (including vermouth), other fermented beverages and spirits and other spirituous beverages in respect of which payment of excise duties are due during the period commencing 1 May 2020 and ending 30 June 2020.
- (b) Notwithstanding anything to the contrary contained in any rule, a licensee of a customs and excise warehouse contemplated in section 19A liable for the payment of excise duty in respect of excisable goods to which this rule applies who is excise compliant, may defer the payment of such excise duty by a period not exceeding 90 days: Provided that the applicable excise duty accounts in respect of such warehouse shall, despite the deferral of payment, be submitted on the dates prescribed or as determined by the Commissioner.
- (c) Penalties for late payment in terms of section 91 and interest in terms of section 105 shall not be levied or charged in respect of an amount deferred in terms of paragraph (b), unless such amount is not paid when due.
- (d) For purposes of paragraph (b) “excise compliant” means that that licensee has no outstanding –
- (i) excise duties, or interest or penalties related thereto, due and payable to SARS for which he or she is liable in terms of the Act; or
 - (ii) accounts, returns or other documents that must be submitted for excise duty purposes to SARS in terms of the Act.”.

Amendment of rule 54FD.04

2. Rule 54FD.04 is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) The documents and payment specified in paragraph (a) must be submitted in the month of July of the year following the tax period, but not later than the penultimate working day of that month, subject to rule 54FD.05(b).”.

Amendment of rule 54FD.05

3. Rule 54FD.05 is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) The period for the submission of documents and payment contemplated in paragraph (b) of rule 54FD.04 commences on **[1 July 2020]** 1 October 2020 and documents and payment must be submitted not later than the penultimate working day of that month. Thereafter submission and payment shall take place in July of each year as contemplated in that paragraph.”.

Insertion of rules

4. The following rules are hereby inserted into the Rules under the Customs and Excise Act, 1964 before rule 106.01:

“Instalment payment agreements

105.01 (a) An outstanding amount payable in terms of the Act may be paid in instalments if the person liable for payment of the amount has, after obtaining permission in terms of rule 105.03, entered into an instalment payment agreement with the Commissioner, containing at least the following details:

- (i) The name and customs and excise code of the person liable for payment of the outstanding amount;
- (ii) if the person liable for payment of the outstanding amount is a juristic entity, the name of the entity’s authorised officer as defined in rules 59A.01(a) and 60.01(1)(a), as well as that officer’s—

- (iii) SARS tax reference number or, if that person does not have a SARS tax reference number, the number and type of his or her identification document; and
 - (iv) physical and postal address, contact details, and capacity;
 - (v) the type of debt;
 - (vi) the amount of the debt;
 - (vii) the instalment amount;
 - (viii) the repayment period;
 - (ix) payment dates; and
 - (x) conditions for—
 - (aa) the repayment in instalments as may be determined by the Commissioner in the specific case to secure the collection of the debt; and
 - (bb) the amendment and termination of the agreement.
- (b) An instalment payment agreement must be signed by the parties and supporting documents as may be required by the Commissioner must be submitted on request.

Qualifying criteria for payment of debt in instalments

- 105.02** (a) Only persons that are tax compliant and that satisfy any one or more of the following qualifying criteria may apply in terms of rule 105.03 for the payment of outstanding amounts in instalments:
- (i) The applicant suffers from a deficiency in assets, funds or liquidity and it is reasonably certain that that deficiency will be rectified in the near future;
 - (ii) the applicant anticipates income or other receipts that will be available for satisfying the debt;

- (iii) the prospect of immediate recovery of the debt is poor or uneconomical but is likely to improve in future; or
 - (iv) immediate recovery of the debt would be harsh in the particular case and the instalment payment agreement is unlikely to prejudice tax collection.
- (b) For purposes of paragraph (a) “tax compliant” means that a person contemplated in that paragraph has no outstanding –
 - (i) taxes, interest, penalties or other amounts due and payable to SARS for which he or she is liable in terms of the Act; or
 - (ii) accounts, returns or other documents that must be submitted for tax purposes to SARS in terms of the Act.
- (c) An applicant whose application is approved must, if required by the Commissioner, provide security in such form and amount as may be determined by the Commissioner.

Applications for instalment payment agreements

- 105.03**
- (a) A person liable for payment of an outstanding amount payable in terms of the Act and who cannot pay the debt in a single payment may apply to the Commissioner for permission to pay that amount in instalments. An application must be submitted by way of a letter on an official letterhead, directed to the Debt Management office at the e-mail address indicated on the SARS website for receipt of such applications.
 - (b) An application referred to in paragraph (a) must reflect the following information:
 - (i) The name and customs and excise code of the applicant;

- (ii) if the application is submitted by a clearing agent or registered agent on behalf of the applicant the name and customs and excise code of the clearing agent or registered agent;
- (iii) if the application is submitted by another representative, the name of the representative, and—
 - (aa) if the other representative is an individual, his or her—
 - (A) SARS tax reference number or, if he or she does not have a SARS tax reference number, the number and type of his or her identification document; and
 - (B) contact details and any physical and postal addresses in the Republic; or
 - (bb) if the other representative is a juristic entity—
 - (A) its SARS tax reference number or, if it does not have a SARS tax reference number, its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country and, if another country, the name of that country;
 - (B) its contact details and any physical and postal addresses in the Republic; and
 - (C) the name and contact details of a contact person;

- (iv) the reference number of any document that demanded payment of the amount, if such a document has been issued;
 - (v) the kind and amount of the debt owed to the Commissioner;
 - (vi) a concise motivation of the applicant's compliance with the qualification criteria set out in rule 105.02, including the reason why the applicant cannot pay the debt in a single payment immediately, which may be submitted in a separate supporting document;
 - (vii) the instalment amounts and repayment period proposed by the applicant; and
 - (viii) the name and contact details of the applicant's auditor or financial adviser, if any.
- (c) An application referred to in paragraph (a) must be supported by such supporting documents as may be required by the Commissioner, including –
- (i) The applicant's bank statements for a period of six months preceding the application, certified by the bank;
 - (ii) documentary evidence of the applicant's financial resources and liabilities, which may consist of—
 - (aa) a copy of the applicant's audited financial statements for the financial year preceding the date of application; or
 - (bb) in the absence of such financial statements, an auditor's certificate to this effect;
 - (iii) documentary evidence of the applicant's compliance with the qualification criteria set out in rule 105.02, including lists of the following:
 - (aa) The applicant's anticipated income and receipts during the proposed repayment

- period, indicating the dates when the income or receipts are expected;
- (bb) the applicant's assets, investments and policies, including a description of the asset, the type of investment or policy, the name of the institution and the relevant values and, if applicable, maturity dates;
 - (cc) the applicant's debtors and creditors including names, contact details and amounts owed or owing; and
 - (dd) contracts or tenders awarded to the applicant, if any, including the name of the institution or contracting party, the contract or tender number, the contract or tender value and the commencement and completion dates;
- (iv) a certified copy of the document authorising the person submitting the application on behalf of the entity, to act on behalf of the entity; and
 - (v) a certified copy of the identification document of an authorised person referred to in paragraph (d)."

Commencement of rule amendments

5. The amendments effected by this Notice commence on the date of publication, except rule 19A.11 which commences on 1 May 2020.