



## Latest News

### HEALTH PROMOTION LEVY (HPL) ON SUGARY BEVERAGES WILL LEAVE A BITTER TASTE

Government proposed the introduction of a Health Promotion Levy (HPL) on sugary beverages as announced by the then Minister of Finance in Budget Review 2016. More information was provided during the Budget Review of 2017.

The HPL is introduced through the insertion of Schedule No. 1 Part 7 to the Customs and Excise Act No. 91 of 1964. Schedule 1 Part 7 provides for the Health Promotion Levy which was promulgated in Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2017, published in *Government Gazette* No. 41323 dated 14 December 2017.

The HPL will take effect on 1 April 2018.

Schedules numbers 4 to 6 to the Customs and Excise Act will also be amended to provide for rebates, refunds and drawbacks of the HPL under certain circumstances.

The Health Promotion Levy will be collected on Duty At Source (DAS) principles. In other words, the levy becomes payable upon entry for home consumption.

With effect from 1 April 2018, Note 5 to Part 7A of Schedule No. 1 will be amended to read:

"The sugar content of sugary beverages liable to the levy on sugary beverages must be calculated on –

- a) the sugar content as certified on a test report obtained and retained from a testing laboratory accredited with and using methodology recognised by the South African National Accreditation System (SANAS) or the International Laboratory Accreditation Cooperation (ILAC); or
- b) the deemed sugar content of the sugary beverage that is assumed to constitute 20 grams per 100 milliliters".

With effect from 1 April 2018:

General Note 3 to Schedule No. 4 will state that the term "full duty" in the column "Extent of rebate" is deemed to include a rebate of environmental levy as well as health promotion levy for purposes of Schedule No. 4.

Rebate item 412.09 will provide for a general major rebate accessible to Health Promotion Levy subject to the provisions of General Note 3 to Schedule No. 4.

Item 561.03 in Part 6 of Schedule No. 5 will be inserted to provide for a refund of Health Promotion Levy. Importers of HPL goods will be entitled to a refund of the HPL under cover of a DA 66, provided they can prove that the goods have been used in accordance with the provisions of the refund item.

Note 8 to Schedule No. 5 will be amended to include the reference to section 54J in order to apply for the HPL.

Note 3 in Part 6 of Schedule No. 5 will be amended to indicate that the prescribed form must reflect the item applicable and the tax type code.

Note 3 in Part 5 of Schedule No. 5 will be amended as a consequence to the amendment of Part 6 to Schedule 5.

Part 6 of Schedule No. 5 will be amended to include refund item 561.03 for a refund of HPL.

Part 6 of Schedule No. 6 is amended to change item 690.02 from a rebate to a refund item. Refund item 691.02 is amended to provide for goods that have become contaminated or have undergone post-manufacturing deterioration to be returned for reprocessing or destruction.

## Customs Draft Amendments

### PROPOSED AMENDMENTS TO LEGISLATION ON STILLS

*(Comments due 20 March 2017)*

Draft notices have been published to invite comments on legislation to reform the excise administration of stills and to regulate the manufacture of excise goods for own use.

Draft rule amendments address the stills capacity that is allowed, records to be kept by stills makers and importers, and obligations upon receipt of unmarked stills. Amendments to relevant items in Schedule No. 8 that relate to stills are also proposed and draft forms DA104 and DA105 are proposed.

New draft rules are proposed to regulate the manufacture of excisable goods solely for use by the manufacturer thereof. The updated draft form DA185 provides for the registration of such manufacturers of excise goods for own use.

The following notices and amended forms have been published:

- Draft rules under sections 63 and 116 relating to stills and manufacture of excise goods for own use;
- Form DA 104 – Application to own, possess or keep a still;
- Form DA 105 – Application by an agricultural distiller for a license to distil spirit;
- Form DA 185.4B2 – Licensing Client Type 4B2 – Manufacturing Warehouse; and
- Draft amendments to Schedule No 8.

Comments should be e-mailed to [C&E\\_LegislativeComments@sars.gov.za](mailto:C&E_LegislativeComments@sars.gov.za).

## Customs Tariff Applications and Outstanding Tariff Amendments

*The International Trade Administration Commission (ITAC) is responsible for tariff investigations, amendments, and trade remedies in South Africa and on behalf of SACU.*

**Tariff investigations include:** Increases in the customs duty rates in Schedule No. 1 Part 1 of Jacobsens. These applications apply to all the SACU Countries, and, if amended, thus have the potential to affect the import duty rates in Botswana, Lesotho, Namibia, Swaziland and South Africa.

**Reductions in the customs duty rates in Schedule No. 1 Part 1.** These applications apply to all the SACU Countries, and, if amended, thus have the potential to affect the import duty rates in Botswana, Lesotho, Namibia, Swaziland and South Africa.

**Rebates of duty on products, available in the Southern African Customs Union (SACU), for use in the manufacture of goods, as published in Schedule No. 3 Part 1, and in Schedule No. 4 of Jacobsens, Schedule No. 3 Part 1 and Schedule No. 4, are identical in all the SACU Countries.**

**Rebates of duty on inputs used in the manufacture of goods for export, as published in Schedule No. 3 Part 2 and in item 470.00. These provisions apply to all the SACU Countries.**

**Refunds of duties and drawbacks of duties as provided for in Schedule No. 5. These provisions are identical in all the SACU Countries.**

**Trade remedies include:** Anti-dumping duties (in Schedule No. 2 Part 1 of Jacobsens), countervailing duties to counteract subsidisation in foreign countries (in Schedule No. 2 Part 2), and safeguard duties (Schedule No. 2 Part 3), which are imposed as measures when a surge of imports is threatening to overwhelm a domestic producer, in accordance with domestic law and regulations and consistent with WTO rules.

To remedy such unfair pricing, ITAC may, at times, recommend the imposition of substantial duties on imports or duties that are equivalent to the dumping margin (or to the margin of injury, if this margin is lower).

**Countervailing investigations** are conducted to determine whether to impose countervailing duties to protect a domestic industry against the unfair trade practice of proven subsidised imports from foreign competitors that cause material injury to a domestic producer.

**Safeguard measures**, can be introduced to protect a domestic industry against unforeseen and overwhelming foreign competition and not necessarily against unfair trade, like the previous two instruments.

**Dumping** is defined as a situation where imported goods are being sold at prices lower than in the country of origin, and also causing financial injury to domestic producers of such goods. In other words, there should be a demonstrated causal link between the dumping and the injury experienced.

The International Trade Commission of South Africa (ITAC) also publishes Sunset Review Applications in relation to anti-dumping duty in terms of which any definitive anti-dumping duty will be terminated on a date not later than five years from the date of imposition, unless the International Trade Administration Commission determines, in a review initiated before that date on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, that the expiry of the duty would likely lead to continuation or recurrence of dumping and material injury.

Customs Tariff Application List 01 of 2018 was published in *Government Gazette* No. 41445 of 16 February 2018.

ITAC has received an application for an increase in the rate of duty on phosphoric and polyphosphoric acids, classifiable under tariff subheading 2809.20, from free to 20%.

Refer to the Bulletin of 7 March 2018 or contact Mr Christopher Sako ([csako@itac.org.za](mailto:csako@itac.org.za)) at telephone (012) 394 3669 or Ms T Morale ([tmorale@itac.org.za](mailto:tmorale@itac.org.za)) at telephone (012) 394 3694.

List 01/2018 was published under Notice 68 of 2018.

Comments for this application are due by 16 March 2018.

## Customs Tariff Amendments

*With the exception of certain parts of Schedule No. 1, such as Schedule No. 1 Part 2 (excise duties), Schedule No. 1 Part 3 (environmental levies), Schedule No. 1 Part 5 (fuel and road accident fund levies), the other parts of the tariff is amended by SARS based on recommendations made by ITAC resulting from the investigations relating to Customs Tariff Applications received by them. The ITAC then investigates and makes recommendations to the Minister of Trade and Industry, who requests the Minister of Finance to amend the Tariff in line with the ITAC's recommendations. SARS is responsible for drafting the notices to amend the tariff, as well as for arranging for the publication of the notices in Government Gazettes.*

*Parts of the South African Tariff are not amended resulting from ITAC recommendations.*

*These parts (for example Parts of Schedule No 1 other than Part 1 of Schedule No. 1), must be amended through proposals that are tabled by the Minister of Finance, or when the Minister deems it expedient in the public interest to do so.*

*Once a year, big tariff amendments are published by SARS, which is in line with the commitments of South Africa and SACU under international trade agreements.*

*Under these amendments, which are either published in November or early in December, the import duties on goods are reduced under South Africa's international trade commitments under existing trade agreements.*

The Commissioner for the South African Revenue Services published notices to implement the health promotion levy on sugary beverages on 1 April 2018.

## Customs Rule Amendments

*The Customs and Excise Act is amended by the Minister of Finance. Certain provisions of the Act are supported by Customs and Excise Rules, which are prescribed by the Commission of SARS. These provisions are numbered in accordance with the sections of the Act. The rules are more user-friendly than the Act, and help to define provisions which would otherwise be unclear and difficult to interpret.*

*Forms are also prescribed by rule, and are published in the Schedule to the Rules.*

There was one rule amendment however the Government Gazette and Notice number was not available at the time of publication.

## Contact Us

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