



Latest News

TAX ADMINISTRATION LAWS AMENDMENT BILL, 2018 PUBLISHED

The Tax Administration Laws Amendment Bill, 2018 (Bill 39 of 2018) has been published in *Government Gazette* No. 41987 of 19 October 2018.

The Bill has been published, amongst other things, to:

- amend the Customs and Excise Act, 1964, so as to insert a provision enabling the Commissioner to implement anti-forestalling measures in respect of anticipated increases in excise duties; to insert a provision providing for the writing off or compromise of any duty, interest, penalty or forfeiture incurred, and owed to the Commissioner for the benefit of the National Revenue Fund;
- amend the Customs Control Act, 2014, so as to effect changes to certain definitions; to amend a provision to ensure that reporting requirements in respect of the departure of trucks due to leave the Republic are adhered to irrespective of whether a truck has cargo on board; to insert a provision providing for the writing off or compromise of debt owed to the Commissioner for credit of the National Revenue Fund;

Section 58A and 114A must be inserted in the Customs and Excise Act, 91 of 1964 (see clauses 5 and 6 on pages 4 and 5 of the Notice).

See also clauses 25 and 26 in respect of the amendment of sections 1 and 71 of the Customs Control Act No. 31 of 2018. Clause 27 on page 9 provides for the insertion of Section 705A of the Customs Control Act, which is aligned to section 114A of the Customs and Excise Act, 91 of 1964.

Read the Explanatory Memorandum from pages 11 of the Notice.

Also refer to Bill 38 of 2018 which can be downloaded at:

<https://www.gov.za/sites/default/files/Taxation%20Laws%20Amendment%20Bill%20B38%20-%202018.pdf>

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.

The International Trade Administration Commission (ITAC) has received and published an application for an increase in the rate of customs duty on combined refrigerator-freezers fitted with external doors, with a total capacity of more than 400 litres, classifiable in tariff subheading 8418.10, from 25% to 30% ad valorem.

The application (list 07/2018) was published in *Government Gazette* No. 41928 of 28 September 2018 under Notice No. 602 of 2018. The ITAC reference number is 04/2018.

For enquiries or comments kindly contact Messrs Pfarelo Phaswana or Njabulo Mahlalela at telephone numbers (012) 394 3628 or (012) 394 3684 or by e-mail pphaswana@itac.org.za or mmahlalela@itac.org.za.

Customs Tariff Application List 06/2018 was published in *Government Gazette* No. 41913 of 21 September 2018 under Notice No. 571 of 2018.

Comments on Notice No. 602 of 2018 (List 07/2018) are due by 25 October 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.

There were no amendments to the SACU Tariff at time of publication.

On 19 October 2018, the rates of duty on wheat and wheaten flour classifiable in tariff subheading 1001.91, 1001.99, 1101.00.10 and 1101.00.90 have been increased from 29,85c/kg and 44,77c/kg to 49,07c/kg and 73,61c/kg respectively, in terms of the existing variable tariff formula as recommended in ITAC Minute 11/2018.

The publication details were not available at time of publication. The publication details were as follows: Notice R. 1134 which was published in *Government Gazette* No. 41986 of 19 October 2018.

The loose-leaf amendments will be sent to subscribers under cover of Supplement 1110.

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 were no amendments to the Customs and Excise Rules at the time of publication. The latest amendment to the Customs and Excise Rules (DAR 177) was published in *Government Gazette* No. 41798 of 27 July 2018.

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