LexisNexis

Jacobsens: Customs News Bulletin

Latest News

EXPECT MORE CHANGES TO SOUTH AFRICA'S VAT LEGISLATION

Former Finance Minister Malusi Gigaba announced an increase in the VAT rate from 14% to 15% with effect from 1 April 2018 during the annual South African Budget.

At that time, Gigaba was criticized as it was deemed that the impact would be too severe on the poor and on middle class citizens.

VAT is an indirect tax. It replaced General Sales Tax (GST) in 1991 because GST was no longer effective due to, amongst other things, the fact there were many exemptions from GST. VAT was thus imposed as it was almost impossible for vendors to escape the tax net.

When VAT was introduced there were two rates: the standard rate of 12 per cent and a zero-rated rate.

Schedule 1 (Section 13(3)) of the VAT Act deals with the exemption of certain goods imported into the Republic from VAT. The average South African citizen generally received little benefit from the zero-rated goods which are referred to in paragraph 7 (a) to Schedule No 1: "goods and foodstuffs set forth in Part A and B of Schedule 2 to this Act (VAT Act, No. 89 of 1991), but subject to such conditions as may be prescribed in the said Part."

The ordinary South African citizen benefits from the zero-rating of 19 items in Part B of Schedule No. 2 to the VAT rate, which includes:

- **Brown bread** as defined in Regulation 1 of the Regulations in terms of *Government Notice* No. R.405 published in *Government Gazette* No. 40828 of 5 May 2017;
- **Maize meal** graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal, not further processed other than by the addition of minerals and vitamins not exceeding one per cent by mass of the final product, solely for the purpose of increasing the nutritional value;
- **Samp**, not further prepared or processed;
- **Mealie rice**, not further prepared or processed;
- **Dried** silo screened **mealies** or dried mealies not further prepared or processed or packaged as seed, but **excluding pop corn** (*zea mays everta*);
- **Dried beans**, whole, split, crushed or in powder form but not further prepared or processed or where packaged as seed;
- **Lentils**, dried, whole, skinned or split;
- **Pilchards or sardinella** supplied in tins or cans consisting mainly of such products regardless of whether flavoured, seasoned or preserved in oil, but excluding such products as are supplied as pet food or sardines supplied in tins or cans;
- **Milk powder** as described and subject to the conditions in Item 9 to Part B of Schedule No. 2 of the VAT Act.
- **Dairy powder blend** as described and subject to the conditions in Item 10 of Part B of Schedule No. 2 to the VAT Act;
- **Rice**, whether husked, milled, polished, glazed, parboiled or broken;
- **Vegetables**, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding dehydrated, dried, canned or bottled vegetables or such vegetables as are described under separate Items in Part B of Schedule No. 2 to the VAT Act;
- **Fruit**, not cooked or treated in any manner except for the purposes of preserving such fruit in its natural state, but excluding dehydrated, dried, canned or bottled fruit and nuts;
- **Vegetable oil**, marketed and supplied for use in the process of cooking food, but ***excluding olive oil***;
- **Milk**, including high-fat, full-fat, low-fat or fat-free milk, being the milk of cattle, sheep or goats that has not been concentrated, condensed, evaporated, sweetened, flavoured, cultured or subjected to any other process other than homogenization or preservation by pasteurization, ultra-high temperature treatment, sterilization, chilling or freezing or the addition of minerals, vitamins, enzymes and other similar additives not exceeding one per cent by volume of the final product, solely for the purpose of increasing the nutritional value;
- **Cultured milk**, being cultured milk as classified under the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), with the class designations described in Item 16 in Part B of Schedule No. 2 to the VAT Act, 1991 (Act No. 89 of 1991);
- **Brown wheaten meal**, being pure, sound wheaten meal, but excluding separated wheaten bran, wheaten germ and wheaten semolina;
- **Eggs**, being raw eggs laid by hens of the species *gallus domesticus*, whether supplied in their shells or in the form of egg pulp being raw pulp consisting of the yolk and white which is obtained from such eggs after the shells have been removed; and
- **Edible legumes and pulse of leguminous plants**, dried, whole, split, crushed, skinned or in powder form, but not further prepared or processed or where packaged as seed or such pulse as are described under separate Items in PART B of Schedule No. 2 to the VAT Act.

Due to the enormous impact of the additional 1 per cent VAT on the masses, the government has indicated that it is prepared to consider adding more items to the zero-rated items in Part B of Schedule No. 2 (listed above).

A panel of independent specialists will be appointed to revise the list above by looking at more items to be added to the list of zero-rated items by 30 June 2018.

Customs Draft Amendments

There are currently no draft documents for comments.

However, the Draft Rules to the Customs Control Act (Act No. 31 of 2014) and the Customs Duty Act (Act No. 30 of 2014) have been published on the SARS website for sight only.

See http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2018-39%20-%20Explanatory%20Note%20-%2028%20March%202018.pdf.

Visit www.sars.gov.za / Legal Council / Draft Documents for Public comment for more information.

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 02 of 2018 was published in *Government Gazette* No. 41989 of 16 March 2018.

The following applications to amend the Common External Tariff (CET) of the Southern African Customs Union (SACU) were published under Notice 136 of 2018:

1. Exemption of the Safeguard Duties applicable to hot-rolled steel products through the creation of provisions under rebate item 470.03 and drawback item 521.00, provided that these products are for use in the manufacture, processing, finishing, equipping or packing of goods exclusively for export. (***Comments are due by 13 April 2018***);
2. Reduction in the rate of duty on ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94 [Commonly known as Linear Low-Density Polyethylene (LLDPE)], classifiable in tariff subheading 3901.40 from 10% ad valorem to free of duty with retrospective effect from the date of submission of this application, being 6 December 2017];
3. (a) Increase in the rate of duty on coated paper and paper board classifiable under tariff subheading 4810.92.90, from free of duty to 5 per cent ad valorem; and

   (b) creation of a temporary rebate provision for paper and paper board coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, multi-ply paper and paper board classifiable in tariff subheading 4810.92.90, containing less than 50 per cent by mass of pulps of fibres derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material classifiable in tariff heading 47.06, in such quantities at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit provided the Commission is satisfied that the products are not available in the SACU region. Draft guidelines are also attached for comment. (***Comments are due by 13 April 2018***).

   Enquiries regarding the exemption of safeguard duties on hot-rolled steel products should be directed to Mr Pfarelo Phaswana and/or Mr Njabulo Mahlalela at tel (012) 394 3628 or (012) 394 3684 or at e-mail addresses pphaswana@itac.org.za or nmahlalela@itac.org.za.

   Enquiries regarding the reduction in the rate of duty on LLDPE should be directed to Ms Elizabeth Kekana (e-mail ekekana@itac.org.za) or fax (012) 394 4668 or Mr Nkulana Phenya (e-mail nphenya@itac.org.za) or fax (012) 394 4677.

   Comments for the application regarding the paper increase should be directed to Ms M Masithela (e-mail mmasithela@itac.org.za) at telephone (012) 394 3682, Mr O Matito (e-mail omatito@itac.org.za) at telephone (012) 394 3692 and/or Mr J Mtimkulu (e-mail jmtimkulu@itac.org.za) at telephone (012) 394 3691.

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.

Numerous notices were published to implement proposals that have been made by more than one South African Minister of Finance since the Budget Review of 2016.

Refer to the Jacobsens Customs News Bulletin of 16 March 2018 for more information on the imposition of the Health Promotion Levy on sugary beverages with effect from ***1 April 2018***.

The Commissioner for the South African Revenue Services also published notices to give effect to other proposals that were tabled during the South African Budget Speech of 21 February 2018

South Africa imposes additional taxes in the form of ad valorem excise duties in Section B of Part 2 of Schedule No. 1 on so-called "luxury goods" such as motor vehicles, cosmetics and certain electronic products.

The maximum ad valorem excise duty rate for motor vehicles will be increased from 25 per cent to 30 per cent with effect from 1 April 2018. Note 2 to Section B of Part 2 of Schedule No. 1 has been amended to give effect to this proposal.

Provision has been made for "smart phones" under tariff subheading 8517.62.20 and 8517.69.10 with effect from 1 April 2018. This is to give effect to the Ministers proposal that "smart phones" also become subject to ad valorem excise duties.

In addition, the ad valorem excise duty rates of 5 per cent and 7 per cent have been increased to 7 per cent and 9 per cent respectively, ensuring that households spending more on luxury goods contribute proportionately more to revenue. The ad valorem excise duty on "smart phones" will also be 9%.

The environmental levies of the following products have been increased with effect from ***1 April 2018*** to give effect to the Budget proposals:

- the rate of environmental levy on plastic bags has been increased from 8c/bag to 12c/bag;
- the rate of environmental levy on incandescent light bulbs has been increased from R6.00 to R8.00 per globe;
- the rates of environmental levy (the motor vehicles emissions tax) on passenger vehicles have been increased from R100 to R110 for every gram of CO_2 emissions per kilometre above 120g CO_2/km and, in the case of double cabs, from R140 to R150 for every gram of CO_2 emissions per kilometre in excess of 175g CO_2/km.

Notices have also been published to increase the fuel levy and road accident fund levy with effect from ***4 April 2018***, to the extent indicated below:

- There will be an increase of 22c/li in the rate of the general fuel levy from 315c/li to 337c/li and 300c/li to 322c/li on petrol and diesel respectively; and
- The road accident fund levy (RAF) will be increased by 30c/li from 163c/li to 193c/li on both petrol and diesel.

The amendment to Part 3 of Schedule No. 6, as a consequence to the increase in the fuel levy is to give effect to the refund provisions that apply to fuel and road accident fund levy products.

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.

The Rules to the Customs and Excise Act, 1964, were amended to provide for Rules to the Health Promotion Levy. Various forms have also been amended.

The amendments were published in Notice No. R.341 in *Government Gazette* No. 41515. The SARS reference number for the Rule amendments is DAR/172.

Contact Us

Havandren Nadasan	Leon Marais
Jacobsens Editor	Independent Customs Consultant
Phone: 031 268 3510	Phone: 053 203 0727
jacobsens@lexisnexis.co.za	leon@itacs.co.za

LexisNexis