

# TAX & EXCHANGE CONTROL ALERT

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### RULING ON CUSTOMER LOYALTY PROGRAMME

The South African Revenue Service (SARS) recently published Binding Private Ruling 310, which deals with the tax treatment of a customer loyalty programme.

### CUSTOMS & EXCISE HIGHLIGHTS

This week's selected highlights in the Customs & Excise environment since our last instalment.

# RULING ON CUSTOMER LOYALTY PROGRAMME

*The applicant would establish a trust, of which the participating customers would be beneficiaries.*

*SARS ruled that the capital contribution would be deductible by the applicant in terms of s11(a), as read with s23(g), of the Income Tax Act.*

The South African Revenue Service (SARS) recently published Binding Private Ruling 310, which deals with the tax treatment of a customer loyalty programme.

The applicant was a local company supplying goods and services in the course of trade. In order to enhance its business, the applicant proposed to implement a customer loyalty programme through which participating customers could benefit.

Specifically, the loyalty programme would entail the following:

The applicant would establish a trust, of which the participating customers would be beneficiaries.

During any particular year, customers would earn points when transacting with the applicant.

The applicant would make a capital contribution to the trust every year, based on its profitability for the year.

The contribution would immediately vest in the participating customers (being beneficiaries) in accordance with each

participant's participation ratio, which is calculated with reference to the points earned during the year.

The trust will apply the capital contribution, on behalf of the vested participants, to either:

- subscribe for shares in the applicant or its holding company; or
- obtain credits against the applicant, which customers could apply when transacting with the applicant.

Where credits are obtained against the applicant, the trust will use the capital contribution to pay the applicant for such credits, as opposed to the applicant merely crediting customer accounts.

In respect of income tax, SARS ruled that the capital contribution would be deductible by the applicant in terms of s11(a), as read with s23(g), of the Income Tax Act, No 58 of 1962.



CHAMBERS GLOBAL 2018 ranked our Tax & Exchange Control practice in Band 1: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2018 in Band 1: Tax: Indirect Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2018 in Band 1: Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017- 2018 in Band 1: Tax: Consultants.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2018 in Band 3: Tax.

# RULING ON CUSTOMER LOYALTY PROGRAMME

CONTINUED

*The benefits received by the participating customers would not be regarded as consideration for any goods or services supplied by the customers.*



In respect of value-added tax, SARS ruled as follows:

- The benefits received by the participating customers would not be regarded as consideration for any goods or services supplied by the customers.
- The issue of any shares to the participants (via the trust), would constitute the supply of an exempt financial service in terms of s12(a), as read with s2(1)(d), of the Value-added Tax Act, No 89 of 1991 (VAT Act), and the payment of the subscription price by the trust on behalf of the participants would constitute consideration for such an exempt supply.
- The payment by the trust to the applicant to obtain credits would constitute consideration to the extent that it is applied towards goods and services already supplied. In this regard the timing of the supply is important. In terms of s9(1) of the VAT Act, the time of supply would be the earlier of the time an invoice is issued or the consideration is actually received. If the applicant had invoiced the customer prior to the trust obtaining, and the applicant applying, the credits, the applicant's liability to account for VAT will have already arisen.
- The payment by the trust to the applicant to obtain credits would not constitute consideration for the applicant to the extent that it will only be applied against future supplies, and as such the applicant would not have any liability to account for VAT in respect thereof.

*Heinrich Louw*



CDH's latest edition of  
**Doing Business in South Africa**  
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# CUSTOMS & EXCISE HIGHLIGHTS

Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.

*In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.*



This week's selected highlights in the Customs & Excise environment since our last instalment.

## AMENDMENTS TO RULES TO THE CUSTOMS & EXCISE ACT, NO 91 OF 1964 ACT (ACT) (CERTAIN SECTIONS QUOTED FROM THE SARS WEBSITE):

**On 7 September 2018 SARS issued draft rules relating to internal appeals under s77H of the Act. The current rules are being replaced in their entirety. The following amendments from the current regime are notable:**

Currently reasons must be provided (if not already sufficiently provided) within 60 days from the request for reasons to SARS. In terms of the draft rules, reasons must be provided within 45 days from the date of the SARS acknowledgement of receipt of the request for reasons.

The draft rules deal in detail with applications for suspension of payment, which currently is not the case in the Act. Notable in this regard are the following:

- The application must be made within the time-frame for submission of the appeal;
- Supporting documents to be submitted are:
  - Bank statements for 6 months certified by the bank; and

- A certified copy of an authorisation document for the person acting on behalf of a legal entity and such person's identification document (where applicable).
- The following factors will be taken into consideration when deciding such application:
  - the amount of the disputed payment;
  - the compliance history of the applicant;
  - the risk of dissipation of assets by the applicant during the period of suspension;
  - the reasons for suspension as submitted by the applicant;
  - whether the applicant has provided or is able to provide adequate security for the payment of the amount;
  - whether payment of the amount would result in irreparable financial hardship to the applicant;
  - whether sequestration or liquidation proceedings are imminent; and
  - whether fraud is involved in the origin of the dispute.

# CUSTOMS & EXCISE HIGHLIGHTS

CONTINUED

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- Suspensions of payment granted may be withdrawn in the following circumstances:
  - if eventual recovery of the disputed payment is compromised by the actions of the appellant;
  - if the appellant abuses the proceedings, including by:
    - unreasonably delaying institution or conclusion of the proceedings;
    - consistently raising frivolous, vexatious or irrelevant issues in the proceedings;
    - employing any dilatory tactics in the proceedings;
    - if on further consideration of the factors referred to above, the suspension should not have been granted;
    - if there is a material change in any of the grounds on which the suspension was granted; or
    - on any other good ground.
- If an appeal is submitted which does not comply with the requirements set out in the draft rules, SARS must within 20 days of acknowledgement of receipt of such appeal advise the appellant thereof. The appellant then has 15 days within which to submit the outstanding documents, which period may be extended on reasonable grounds. If the appellant does not provide the outstanding documents within time, the appeal lapses.
- SARS will have a discretion to extend the *dies* for submission of the appeal by no longer than 15 days (and application for such extension must be made within the timeframe for submission of the appeal). Currently there is no such discretion.
- In general, SARS currently must decide an appeal within 90 days from submission. Under the draft rules SARS has 60 days.
- Appeal committees are being reduced from five to three, being:
  - A Customs and Excise Branch Office Appeal Committee;
  - A Tariff, Valuation and Origin Appeal Committee at Head Office; and
  - A Customs and Excise National Appeal Committee at Head Office.
- For branch office appeal committees, the power of such committees to hear matters will be broadened, so that it can hear matters involving disputed amounts up to a maximum of R10,000,000. The amount of R10,000,000 previously stood at R5,000,000.
- Documents may be submitted through eFiling, e-mailed or delivered by hand. It appears that the requirement to deliver an original when earlier submitted electronically is no longer required.

SARS published for public comment a draft amendment notice to the rules under s8 of the Act relating to the reporting of conveyances and goods (RCG) for trains, which are intended to replace the current rules under s8 of the Act.

# CUSTOMS & EXCISE HIGHLIGHTS

CONTINUED

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The content of the proposed rules under s8 is, within the context of the Act, closely related to Chapter 3 of the Customs Control Act, No 31 of 2014 (CC Act). The proposed rules are intended to bring the RCG requirements under the Act closer to what will be required in terms of the CC Act when the CC Act comes into effect.

Comments can be submitted to:  
[C&E\\_legislativecomments@sars.gov.za](mailto:C&E_legislativecomments@sars.gov.za).

Due date for comments is 8 October 2018.

#### **AMENDMENTS TO SCHEDULES TO THE ACT:**

##### **Schedule 2:**

The substitution of various safeguard items to exclude rebate items 470.03/00.00/01.00 to 470.03/00.00/03.00 in order to exempt certain hot-rolled products from safeguard duties for the period 21 September 2018 up to and including 10 August 2019;

The substitution of various safeguard items to exclude rebate items 470.03/00.00/01.00 to 470.03/00.00/03.00 in order to exempt certain hot-rolled products from safeguard duties for the period 11 August 2019 up to and including 10 August 2020;

##### **Schedule 5:**

The substitution of Note 3 to allow for a drawback of safeguard duty on certain hot-rolled steel products in terms of drawback item 521.00.

**THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION HAS ISSUED A NOTICE DATED 21 SEPTEMBER 2018 REGARDING AN APPLICATION RECEIVED IN RELATION TO A CUSTOMS TARIFF, AS FOLLOWS (CERTAIN SECTIONS QUOTED FROM THE NOTICE):**

An increase in the rate of customs duty on acrylic resins classifiable under tariff subheadings 3906.90.20 and 3208.20.90 from free of duty and 10% ad valorem respectively, to 15% ad valorem.

Representations should be submitted within four (4) weeks of the date of the notice.

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Please advise if additional information is required.

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*Petr Erasmus*

## **Who's Who Legal**

Emil Brincker has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory and Who's Who Legal: Corporate Tax – Controversy for 2017.

Mark Linington has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory for 2017.

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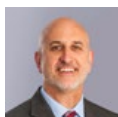
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