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# GOVERNMENT NOTICE

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## **SOUTH AFRICAN REVENUE SERVICE**

**No. R. 1251****1 October 2002****CUSTOMS AND EXCISE ACT, 1964****AMENDMENT OF RULES (NO. DAR/55)**

Under sections 19A, 20, 21, 39(2A), 60, 61 and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R1874 of 8 December 1995 are amended to the extent set out in the Schedule hereto as follows:

- (1) General rules numbered 19A.01 to 19A.10 insofar as they relate to tobacco products and specific rules numbered 19A1.01 to 19A.04 in respect of tobacco products shall come into operation on 1 October 2002.
- (2) Where rule 19A.04 states 30 September 2002 as the effective date for any requirement, that date is specified in respect of transitional arrangements made with licensees of customs and excise warehouses in order to implement the new procedures specified in these rules on 1 October 2002.
- (3) Rules in respect of beer (to be numbered 19A2), spirits (to be numbered 19A3) and fuel levy goods (to be numbered 19A4) will be published at later dates, and those rules and rules 19A.01 to 19A.10, insofar as they relate to such beer, spirits or fuel levy goods shall come into operation when the date or dates of operation of section 19A in respect of those goods are determined by proclamation as contemplated in section 40(1) of the Revenue Laws Amendment Act, 2001, (which inserted section 19A of the Customs and Excise Act, 1964).

**P J GORDHAN****COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

### **SCHEDULE**

By the insertion after the rules for section 19 of the following rules:

**"RULES FOR SECTION 19A OF THE ACT**

**Special provision in respect of customs and excise warehouses in which excisable or fuel levy goods are manufactured or stored.**

**Rules regarding the manufacture, payment of duty and controlled movement of beer, tobacco products, spirits and fuel levy goods.**

**19A General rules**

**19A.01 Numbering and application of provisions**

- (a)
  - (i) The rules numbered 19A are general rules;
  - (ii) The rules numbered 19A1 are rules in respect of tobacco products;
  - (iii) The rules numbered 19A2 are rules in respect of beer;
  - (iv) The rules numbered 19A3 are rules in respect of spirits;
  - (v) The rules numbered 19A4 are rules in respect of fuel levy goods.
- (b) The provisions of these rules apply to the following goods:
  - (i) Excisable goods specified in Section A of Part 2 of Schedule No 1—
    - (aa) beer made from malt classifiable under item 104.10;
    - (bb) spirits classifiable under item 104.20;
    - (cc) cigars, cheroots, cigarillos and cigarettes of tobacco or tobacco substitutes classifiable under item 104.30; and
    - (dd) cigarette tobacco and substitutes thereof and pipe tobacco and substitutes thereof classifiable under item 104.35.
  - (ii) petrol, distillate fuel, unmarked illuminating kerosene and unmarked specified aliphatic hydrocarbon solvents that are classifiable under item 105.10 of Section A of Part 2 and item 195.10 of Part 5 of Schedule No 1.
  - (iii) imported goods of the same class or kind where express reference is made to such goods.

- (c) for the purposes of these rules and any form to which these rules relate, unless the context otherwise indicates—

- (i) any reference to —

“beer”, shall be deemed to be a reference to beer contemplated in paragraph (b)(i)(aa);

“fuel levy goods”, shall be deemed to be a reference to those goods contemplated in paragraph (b)(ii);

“spirits”, shall be deemed to be a reference to the spirits contemplated in paragraph (b)(i)(bb);

“tobacco products”, shall be deemed to be a reference to those goods contemplated in paragraph (b)(i)(cc) and (dd);

- (ii) “BLNS country” means the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia or the Kingdom of Swaziland.

“customs and excise laws and procedures” shall have the meaning assigned thereto in rule 59A.01(a);

“customs and excise warehouse” means a licensed customs and excise manufacturing or storage warehouse;

“licensee” means the licensee of a customs and excise manufacturing or storage warehouse;

“manufacturing warehouse” means a licensed customs and excise manufacturing warehouse;

“refund” includes any set-off against, or any deduction from any account required to be submitted by a licensee of a customs and excise warehouse as authorised in terms of any provision of the Act;

“storage warehouse” means a licensed customs and excise storage warehouse”;

“the Act” includes any provision of “this Act” as defined in the Customs and Excise Act, 1964 (Act No. 91 of 1964);

“VMP warehouse” means a customs and excise warehouse licensed for primary production of spirits defined in rule 19A3.01;

“VMS warehouse” means a customs and excise warehouse licensed for secondary production of spirits defined in rule 19A3.01.

“warehouse” means any licensed customs and excise manufacturing or storage warehouse.

- (d) Except as otherwise provided in section 19A and these rules —

- (i) any provision of this Act relating to a customs and excise manufacturing or storage warehouse, the manufacture or storage of goods in such a warehouse including liability for duty, payment of duty, removal of goods from such warehouse for home consumption, removal in bond, export, entry under rebate of duty, the responsibility of the licensee and any other requirement prescribed in connection with any such warehouse;

- (ii) sections 59A and 60 and the rules therefor including the definitions in such rules;
- (iii) sections 64D and 64E and the rules therefor including the definitions in such rules; and
- (iv) the rules numbered 120A, where applicable;

shall, apply *mutatis mutandis* to the licensing of, and any activity in or in connection with, any licensed customs and excise warehouse in which beer, spirits, tobacco products or fuel levy goods are manufactured or such goods or any imported goods referred to in these rules, are stored.

**19A.02 Applications for and refusal, suspension or cancellation of a licence**

- (a) A person applying for a licence or renewal of a licence for a customs and excise manufacturing warehouse or a customs and excise storage warehouse must —
  - (i) apply on form DA 185 and the appropriate annexures thereto and comply with all the requirements specified therein, in these rules, any relevant section or item of Schedule No. 8 governing such licences, any requirement specified in Schedule No. 6 and any additional requirements that may be determined by the Commissioner;
  - (ii) submit with the application the completed agreement in accordance with the *pro forma* agreement specified in these rules;
  - (iii) before a licence is issued furnish the security the Commissioner may require.
- (b)
  - (i) An expression in the *pro forma* agreement shall, unless the context otherwise indicates, have the meaning assigned thereto in the Act or in the rules for section 60 or these rules.
  - (ii) The provisions of rule 60.09(2) shall apply *mutatis mutandis* in respect of the *pro forma* advice to be issued in respect of suspension or cancellation of a license.
- (c) The provisions of section 60(2) shall apply *mutatis mutandis* in respect of the refusal of an application for a new licence or renewal of a licence, or the withdrawal or suspension of a licence for a customs and excise warehouse.

**19A.03 Delegation**

Subject to section 3(2), where-

- (a) any power that may be exercised by the Commissioner, except for the power to make rules, in accordance with the provisions of this Act, including these rules, is not specifically delegated, or
- (b) any duty that shall be performed by the Commissioner in accordance with the provisions of the Act, including these rules, is not specifically assigned, to any Controller or officer in these rules or in any section or rule regulating the operation of customs and excise warehouses, such power is delegated or such duty is assigned, as the case may be, to the Assistant General Manager, Operations, Customs and Excise.

**19A.04 Issue of invoices or dispatch delivery notes in respect of goods removed from a customs and excise warehouse**

- (a) Any licensee of any customs and excise warehouse who removes any goods, to which these rules relate, from such warehouse for any purpose contemplated in section 20(4), including for the purpose of a rebate of duty under the provisions of section 75 and any item of Schedule No 6, or who removes any fuel levy goods from duty paid stocks for any purpose, must in addition to any other document required to be completed in respect of any procedure prescribed in the Act, complete an invoice or dispatch delivery note, serially or transaction numbered and dated which must include at least —
  - (i) (aa) the licensed name, customs client number, warehouse number (where applicable) and physical address of the licensee who so removes such goods;
  - (bb) a description of the goods so removed, including the relevant tariff item and if applicable, the rebate item;
  - (cc) the quantity of goods so removed;
  - (dd) the date of removal of the goods;
  - (ee) the name or business name (if any) and the address of the person to whom the goods are removed;
  - (ff) the number of the customs and excise warehouse to which the goods are removed, if applicable;

- (gg) where applicable, the price charged for each unit and the total price of the invoiced goods;
  - (hh) where the goods are removed to a destination in the Republic for any purpose other than home consumption, the customs client number of the person to whom the goods are so removed.
  - (ii) in respect of —
    - (aa) beer, the registered brand name and the alcoholic strength by volume for each brand;
    - (bb) spirits, the volume, and percentage of alcohol by volume at 20° Celsius;
    - (cc) tobacco products —
      - (A) cigarettes, the number;
      - (B) all other, the mass;
    - (dd) fuel levy goods, the volume at 20° Celsius,
  - (iii) in all instances, any other particulars required for determining the rate and amount of duty on any goods specified in such invoice and removed from such warehouse.
- (b) (i) Such invoice or dispatch delivery note issued in respect of beer and tobacco products removed for home consumption and payment of duty from any customs and excise manufacturing warehouse and spirits removed from a VMP warehouse, shall be deemed to be an entry for home consumption on compliance with the requirements of section 38(4).
- (ii) Any such invoice must be issued for fuel levy goods removed for any purpose from a customs and excise storage warehouse and such invoice shall be deemed to be an entry for home consumption and payment of duty and the duty due thereon must be accounted for in the monthly accounts, subject to authorised deductions, as contemplated in the rules numbered 19A4.02;
- (iii) Fuel levy goods removed from a customs and excise manufacturing warehouse for any purpose shall be deemed to be entered for home consumption and payment of duty on completion and issuing of the document contemplated in rule 19A4.02;

**19A.05****Keeping of books, accounts and documents**

- (a) For the purposes of section 101 and notwithstanding anything to the contrary in any rule contained, every licensee must, as required in terms of rule 60.08(2) —
  - (i) keep proper books, accounts and documents and any data created by means of a computer, of all transactions relating to the activity in respect of which the licence is issued, for a period of five years calculated from the end of the calendar year in which any such document was created, lodged or required for the purposes of any customs and excise procedure;
  - (ii) include in such books, accounts, documents and data any requirements prescribed in any provision of the Act in respect of the activity for which the licence is issued;
  - (iii) produce such books, accounts, documents and data on demand at any reasonable time and render such returns or submit such particulars in connection with the transactions relating to the licensed activity as the Commissioner may require.
- (b) Such books, accounts, documents and data must include —
  - (i) Where applicable —
    - (aa) proper accounting records of each type of goods received, stored, used or removed;
    - (bb) copies of invoices, dispatch delivery notes, bills of entry, transport documents, orders, payments received and made, proof of delivery to the consignee in respect of goods removed for any purpose excluding home consumption and payment of duty;
    - (cc) copies of the contract of carriage entered into between the licensee and the licensed remover of goods in bond and delivery instructions issued to such remover in respect of each consignment;
    - (dd) copies of the monthly accounts rendered for payment of duty in respect of warehouses authorised to dispose of goods for home consumption;
    - (ee) a stock account balanced monthly whether or not the licensee is authorised to dispose of goods for home consumption and payment of duty.
  - (ii) where such warehouse is a manufacturing warehouse, a stock record wherein the licensee must record daily —
    - (aa) receipts of materials for manufacturing;



- (bb) quantities of materials used and the nature and quantities of excisable goods produced from such materials;
- (cc) the production rate of the materials used;
- (dd) nature and quantities of by-products or other goods manufactured;
- (ee) a separate record for losses in the manufacturing process or through working, pumping, handling or any similar causes or from natural causes as contemplated in item 608.01 of Schedule No. 6.
- (ff) in the case of a licensee of any such warehouse in respect of which a fixed loss is allowed in terms of section 75(18), the actual loss.

**19A.06 Closing and submission of accounts in respect of goods manufactured and received into, and removed from, a customs and excise warehouse**

- a) For the purposes of section 20(4), any goods to which these rules relate that are entered for removal and removed from any customs and excise warehouse for any purpose, including to any other warehouse, shall be subject to the provisions of section 19A and to such restrictions, procedures and other requirements prescribed in these rules.
- b) (i) (aa) Subject to the provisions of these rules, for the purposes of sections 38(4) and 39(2A) and payment of duty, excise duty accounts on form DA 260 in respect of beer, tobacco products or spirits or on forms DA 159 or DA 160 for fuel levy goods together with the validating bills of entry, (form DA 610) for each customs and excise manufacturing warehouse in respect of all such goods produced and received in, and removed from such warehouse for any purpose specified in section 20(4), during the previous month or during such other period as may be prescribed in these rules, must be submitted by the licensee to reach the Controller within 30 days after closing of duty accounts, as specified in paragraph (c), during the hours of business prescribed in item 201.20 of the Schedule to the rules for acceptance of bills of entry and for receipts of duties and other revenue;
- (bb) the provisions of paragraph (aa) shall *mutatis mutandis* apply to any storage warehouse for fuel levy goods from which any such goods are removed for home consumption or any other purpose.

- (ii) Such month is referred to in these rules as "accounting month" and is calculated between the dates of closing of accounts from the day after such closing of accounts as follows —
  - (aa) from the specific day in the specific month to the numerically corresponding day in the following month, less one (for example, where closing of accounts, takes place on the 25<sup>th</sup> January, the accounting month is calculated from 26<sup>th</sup> January to 25<sup>th</sup> February; or
  - (bb) where calculation must commence on the first day of a month to the last day of that month; or
  - (cc) where calculation must commence from the last day of a month which contains more days than the next succeeding month, the accounting month expires one day before the end of the latter month, for example, from 31 January to 27 or 28 February;
  - (dd) if a new licensee commences business on a certain date the first accounting month shall be the period from such date to the date of the first closing of the accounts.
- (c)
  - (i) For the purposes of paragraph (b)(i), closing of duty accounts is by arrangement with the Controller, on a date between the 25<sup>th</sup> day and the last day of the month and the date so arranged shall apply permanently in every month during the existence of such arrangement.
  - (ii) Notwithstanding that the date for closing of accounts may fall on a Saturday, Sunday or public holiday, the calculation of the date for submission of accounts or payment of duty must commence on the day after the date of such closing of accounts.
- (d)
  - (i) Notwithstanding the provisions of paragraph (c), the Assistant General Manager, Operations, Customs and Excise may, subject to such conditions as he may impose in each case, determine any other date for the closure of accounts.
  - (ii) Where a licensee is allowed to close accounts for accounting on any day after the last day of any month, the date for calculation of the date for submission of accounts or payment of duty must commence on the day after such last day.
- (e)
  - (i) For the purposes of account forms DA 159, DA 160 and DA 260, no quantity in respect of any goods removed
    - (aa) under rebate of duty, or
    - (bb) in bond under the provisions of section 18; or

(cc) in terms of any procedure authorising a refund of duty; or

(dd) exported under section 18A,

may be deducted from the total quantity of goods accounted for on such form, unless it is proved that liability for duty has ceased as contemplated in rule 19A.11.

(ii) where a lesser quantity of goods is removed and entered at the place of destination in the case of goods removed in bond or exported or delivered to the rebate user or to any consignee in a BLNS country, only the quantity so entered at the place of destination or exported or delivered may be so deducted on the relevant form DA159, DA160 or DA 260.

(f) (i) Where licensing of a customs and excise warehouse is restricted for special or limited purposes as contemplated in section 19A(1)(a)(ii), with the effect that goods stored therein may only be exported, supplied under rebate of duty to a registered rebate user or supplied to a customs and excise storage warehouse licensed for supplying stores to foreign-going ships or aircraft or as a duty free shop, the licensee must submit to the Controller within 14 days after the end of March, June, September or December for each quarter an account on form DA260 or DA159, as the case may be, in respect of goods received into, goods removed from and goods in stock, in such warehouse.

(ii) Where the licensee of a customs and excise storage warehouse is allowed to store imported and locally-produced goods for export or for operating a duty free shop such goods must be accounted for separately in such account.

#### **19A.07 Removal of goods in bond to a BLNS country**

- (a) No beer, tobacco products or spirits may be removed to a customs and excise storage warehouse in a BLNS country unless the goods are removed to such a warehouse licensed for the supply of stores to foreign-going ships or aircraft or as a duty free shop at an airport.
- (b) Fuel levy goods may only be removed to any BLNS country from stocks entered or deemed to have been entered for home consumption and payment of duty as provided in these rules.

#### **19A.08 Duties amended in a taxation proposal under section 58(1)**

- (a) Whenever the Minister tables a taxation proposal as contemplated in section 58(1) in respect of any goods to which these rules relate, such goods shall be deemed to have been entered for home consumption before 15:00 on the date of such proposal in the case of —

- (i) beer and tobacco in a customs and excise manufacturing warehouse and spirits in a VMP customs and excise manufacturing warehouse, where the invoice prescribed in these rules has been issued and the goods removed from such warehouse before 15:00 on such date;
  - (ii) spirits in a VMS warehouse, where spirits entered on form DA 610 for removal from a VMP manufacturing warehouse to a VMS manufacturing warehouse are received in such VMS warehouse before 15:00 on such date;
- (b)
  - (i) Licensees must close their duty accounts in respect of goods of which the duties are amended in such taxation proposal at 15:00 on the date of such proposal and such time and date shall be regarded as the time and date of closing of accounts;
  - (ii) Because the licensee closes the account on the date of such tax proposal, the date for submission of accounts and payments of the duties due for the accounting month as provided in these rules must be calculated from the day after the date of such taxation proposal;
  - (iii) The next accounting month will commence immediately after the time and date of the closing of accounts and will close on the date of closing of accounts in the next month as contemplated in rule 19A.06.

**19A.09 Liability for duty**

- (a) Subject to paragraph (b), the provisions of section 18(2) and (3) in the case of goods entered for removal in bond from a customs and excise warehouse or section 18A(1) and (2) in the case of goods entered for export from a customs and excise warehouse apply in respect of the liability, and the termination of liability, for duty of a licensee who so enters such goods and such liability shall, unless proof has been obtained in an improper or fraudulent manner, cease in the case of —
  - (i) goods contemplated in section 18(3)(a), when it is proved that the goods have been received in and entered for rewarehousing at the destination in the Republic or any BLNS country to which they were removed in terms of the removal in bond bill of entry or any other document authorised in these rules;

- (ii) goods contemplated in section 18A(1) and (2) that are exported by road to any country in Africa, outside the common customs area, when it is proved that the goods have been received in such country at the customs office of destination;
  - (iii) goods exported by means of any ship or aircraft, when it is proved that the goods have been loaded into, for carriage by, such ship or aircraft;
  - (iv) goods carried by rail to any destination outside the Republic, when the consignor confirms that the goods were received by the consignee in the country of destination; or
  - (v) goods entered under rebate of duty for delivery to a rebate user, when such user duly acknowledges receipt of such goods.
- (b) where in respect of any goods removed in bond or removed in terms of any procedure authorising a refund of duty or exported —
- (i) any proof has been improperly or fraudulently obtained; or
  - (ii) any goods are damaged or destroyed or lost or diminished before liability has ceased as contemplated in paragraph (a),
- the licensee shall furnish a full report within 14 days after such an event and pay any duty due to the Controller.

**19A.10      Spirits or fuel levy goods reprocessed in or removed or returned to a customs and excise manufacturing warehouse on which a percentage deduction contemplated in section 75(18) has been claimed and granted**

Whenever any spirits or fuel levy goods on which any deduction from the dutiable quantity has been claimed and granted as contemplated in section 75(18) are reprocessed in or removed or returned to a customs and excise manufacturing warehouse, such warehouse in which such goods are so reprocessed, removed or returned must add any such quantity to the dutiable quantity for the accounting month during which such goods were so reprocessed, removed or returned.

**19A1 Rules in respect of tobacco products****19A1.01 Customs and excise warehouses for the manufacture and storage of tobacco products**

- (a) These rules are additional to the general rules numbered 19A.
- (b) Customs and excise warehouses for the manufacture or storage of tobacco products may be licensed only for the purposes of —
  - (i) manufacturing of tobacco products;
  - (ii) storage of such products for export; or
  - (iii) storage of such products for supply to any other customs and excise storage warehouse licensed as—
    - (aa) a duty free shop; or
    - (bb) for the supply of dutiable goods to foreign-going ships or aircraft.
- (c) For the purposes of section 19A(a)(ii), tobacco products stored as contemplated in paragraph (b)(ii) or (iii) may not be removed from such warehouses for home consumption and payment of duty, except if the Commissioner, on good cause shown, and subject to such conditions as he may impose in each case, permits such removal.

**19A1.02 Clearance of tobacco products from a customs and excise manufacturing warehouse and payment of duty**

- (a) Where tobacco products are removed from a customs and excise manufacturing warehouse for home consumption and payment of duty, the invoice or dispatch delivery note duly completed and issued as contemplated in rule 19A.04, shall, subject to compliance with the provisions of section 38(4), be deemed to be due entry for home consumption of such tobacco products.
- (b) (i) In accordance with rule 19A.06, excise accounts on prescribed form DA 260.00 and its applicable schedules together with the validating bills of entry (DA 610) must be submitted for the relevant accounting month by the licensee of the customs and excise manufacturing warehouse to reach the Controller within 30 days after the date of closing of accounts, during the hours of business prescribed in item 201.20 of the Schedule to the Rules for acceptance of bills of entry and for receipt of duties and other revenue.
- (ii) Excise duty payable as calculated on form DA 260.00 and entered on form DA610 must be paid, to reach the Controller within 60 days after the date of such closing of accounts, but not later than the

penultimate working day of the second month following any accounting month as contemplated in rule 19A.06(c), during the hours of business prescribed in item 201.20 of the Schedule to the Rules for acceptance of bills of entry and for receipt of duties and other revenue.

- (iii) If payment is made by electronic funds transfer, proof of payment must be submitted to reach the Controller during the period and the hours of business specified in subparagraph (i).

**19A1.03      Removal of tobacco products from one excise manufacturing warehouse to another excise manufacturing warehouse**

Any tobacco product may be removed in bond from one customs and excise manufacturing warehouse to another customs and excise manufacturing warehouse for the purpose of reprocessing or repacking only when these manufacturing warehouses are licensed by the same licensee.

**19A1.04      Transitional arrangements – Tobacco products**

**19A1.04A** Provisions specifying 30 September 2002 as the effective date for any requirement are in respect of transitional arrangements made with licensees in order to implement the new procedures specified in these rules on 1 October 2002.

**Licensing and de-licensing**

- (a) (i) (aa) Before 30 September 2002 or within a reasonable period after such date every licensee of an existing customs and excise manufacturing warehouse; and,  
(bb) at any time, any applicant for a licence for a customs and excise storage warehouse contemplated in rule 19A1.01 (b)(ii) and (iii),

must apply for a license on form DA 185 and the appropriate annexure which must be submitted together with supporting documents required and the completed pro forma agreement in accordance with the requirements specified in rule 19A.02.

- (ii) (aa) The existing license of the manufacturing warehouse will remain in force unless the Controller decides to cancel such license and issue a new license.

- (bb) Any licensee shall furnish such additional security as the Commissioner may require before 30 October 2002.
- (b) (i) (aa) On 30 September 2002 at 13:00 or at any time on that date as arranged with the Controller, licensees of all customs and excise manufacturing and storage warehouses must take stock of all tobacco products in such warehouses, excluding storage warehouses licensed as a duty free shop or for the supply of dutiable goods to foreign going ships or aircraft, but including the dispatch sections of manufacturing warehouses.
- (bb) An account for tobacco products removed from any such warehouse from the last date of closing of duty accounts preceding 30 September 2002 and 13:00, or such other time as arranged with the Controller, on 30 September 2002 must be submitted to the Controller, and the duty due paid thereon not later than the penultimate working day of October 2002 during the hours of business prescribed in item 201.20 of the schedule to the rules for acceptance of bills of entry and for receipt of duties and other revenue.
- (ii) Stock reports must reflect in respect of each type of such products —
- (aa) the stock figure by quantity;
- (bb) the applicable rate of duty;
- (cc) assessed excise duty amounts, except in the case of stock in the dispatch sections of manufacturing warehouses and stock in manufacturing warehouses.
- (iii) within 3 days of conclusion of such stocktaking submit to the Controller the original stock sheets for assessment verification purposes.
- (iv) any goods in transit from any manufacturing or storage warehouse to another such warehouse must be shown separately and included in the stock of the receiving warehouse.
- (v) The stock quantities for each type of product in the dispatch section of a manufacturing warehouse, as determined on 30 September 2002, must be entered on form DA 610 (ZIB) and transferred to the stock of that manufacturing warehouse and must be accounted for in the opening stock on the October 2002 excise account for such warehouse.
- (vi) Officers may without prior notice attend the stocktaking at any such warehouse.
- (vii) Officers may verify or monitor stocktaking in conjunction with licensees as the Controller may consider necessary.



**Transfers in bond to and de-licensing of storage warehouse**

- (c) (i) After 13:00 or such other time as arranged with the Controller on 30 September 2002, no goods may be removed in bond to any customs and excise storage warehouse unless such storage warehouse has been licensed for any of the purposes specified in rule 19A1.01(b)(ii) and (iii) including a storage warehouse licensed as a duty free shop or for the supply of dutiable goods to foreign going ships or aircraft.
- (ii) Where the license of any licensed storage warehouse is cancelled as contemplated in section 19A(3) the surety bond will be cancelled when the licensee has fulfilled all obligations under such bond.

**Assessment and payment of duty**

- (d) (i) The Controller will furnish a schedule of all duties payable on tobacco products in stock as contemplated in paragraph (b)(ii) on or before 30 October 2002.
- (ii) The licensee must pay the duty due on such schedule on or before 28 November 2002.

**CUSTOMS AND EXCISE ACT, 1964 (ACT NO. 91 OF 1964)**

**LICENSING OF CUSTOMS AND EXCISE WAREHOUSES**  
**Pro Forma Agreement between the licensee of a Customs and Excise Warehouse**  
**and the Commissioner**

**Annexure A**

As \_\_\_\_\_  
 (Full name of applicant – hereinafter referred to as "licensee")

of \_\_\_\_\_  
 (Physical address of applicant – not a PO Box)

herein represented by

_____	_____
Full Name	Capacity

\*duly authorised thereto by virtue of–

- (a) \*a resolution passed at a meeting of the Board of Directors held at ..... on ..... day of .....; or
- (b) \*express consent in writing of all the partners of a partnership /\*members of the close corporation /\*trustees of the trust; or
- (c) \*being a person having the management of any other association of persons referred to in rule 60.02(2)(a)(iv),

has applied for a customs and excise warehouse licence; and

(\*Delete whichever is not applicable)

as the Commissioner has considered the application and decided to issue a licence subject to compliance with the terms and conditions of this agreement, it is agreed that the licensee shall be bound by the following:

1. Licensee undertakes to furnish security in the amount determined and in a form and in the nature determined by the Commissioner and to maintain such security until such time as the Commissioner is on good cause shown satisfied that every liability incurred under the Act by the licensee has ceased and each of the conditions of the licence has been complied with.
2. Licensee acknowledges as a precondition to being allowed to engage in the activities regulated by the Act and for which the licence is granted that it–
  - (a) understands that its rights to conduct the business of a customs and excise warehouse are subject to compliance with customs and excise laws and procedures, the provisions of this agreement and any standards of conduct that may be imposed by the Commissioner;
  - (b) is aware of the civil and criminal regulatory consequences of non-compliance with such laws and procedures and the provisions of this agreement.

- (c)
  - (i) Licensee is aware of and acknowledges the statutory powers, rights and obligations of the Commissioner and his/her delegated officers to inspect for the purposes of the Act the books, accounts, documents and other records of the business in respect of which the licence is issued, including such records in respect of individual clients or specific transactions as well as the banking accounts and records relating to the business conducted under the licence.
  - (ii) Licensee hereby agrees to and authorises the inspection of such books and documents and business banking accounts as the Commissioner and the delegated officers may require.
- (d) Licensee is aware of its obligations and undertakes to advise the Commissioner for the purposes of section 60(2) of the Act, whenever the licensee or any employee (except in respect of subparagraph (v)) of the licensee—
  - (i) has contravened or failed to comply with the provisions of the Act;
  - (ii) has failed to comply with any condition or requirement of this agreement or any condition or obligation imposed by the Commissioner in respect of such licence;
  - (iii) is convicted of any offence under the Act;
  - (iv) is convicted of any offence involving dishonesty;
  - (v) is sequestrated or liquidated;
  - (vi) fails to comply with the qualification requirement set out in the rules for section 60; or
  - (vii) ceases to carry on the business for which the licence is issued,and licensee acknowledges the right of the Commissioner to cancel or suspend the licence in accordance with the provisions of section 60(2) on the grounds of any of these provisions or requirements.
- (e) Licensee in addition undertakes:
  - (i) to keep on the business premises books, accounts, documents and other records relating to the transactions of the business comprising, where applicable, at least—
    - (aa) in the case of imported goods, copies of the relative import bills of entry, transport documents, suppliers invoices, packing lists, bank stamped invoices, payment advices and other documents required in terms of section 39 of the Act;
    - (bb) in the case of excisable and fuel levy goods not being distillate fuel referred to in subparagraph (cc), books, accounts and documents as the Controller may require;

- (cc) in the case of distillate fuel on which a refund of fuel levy is granted in terms of item 640.03 of Schedule No. 6, the documents specified in Note 14 to item 640.03;
  - (dd) in the case of exported goods, copies of the relative export bills of entry, invoices and other transport documents;
  - (ee) in the case of goods subject to rules of origin such records as are prescribed in the rules for sections 46, 46A and 49;
  - (ff) every contract entered into and any instruction given to any licensed remover of goods in bond in respect of the carriage of goods by such remover;
  - (gg) books, accounts documents and proof of fulfilment of any obligation relating to the removal of goods in bond, rewarehousing, goods exported or other goods for which such acquittals are required in terms of any provision of the Act; and
  - (hh) to keep any other books, accounts, documents and other records which may be required in terms of any rule relating to any business transacted as a licensee of a customs and excise warehouse under the provisions of the Act;
- (ii) notwithstanding any other provisions in the Act or the rules thereto, to keep such books, accounts, documents or other records available for inspection by the Commissioner for a period of five years calculated from the end of the calendar year in which any such document was created, lodged or required for the purposes of any customs and excise procedure;
- (iii) to answer and to ensure that any employee answers, fully and truthfully any questions of the Commissioner or an officer relating to its business or that of its principal required to be answered for purposes of the Act;
- (iv) to render such returns or submit such particulars in connection with its transactions and the goods to which the transactions relate as the Commissioner or his delegated officer may require;
- (v) to institute adequate administrative measures and procedures in and for its business and if and when able to do so to improve such measures so as to ensure—
- (aa) that the contents of all documents submitted to the Commissioner or a Controller for purposes of the Act are duly verified and completed in accordance with the provisions of the Act;
  - (bb) that every person in the employ of the licensee and engaged in the customs and excise warehouse business of the licensee is conversant with customs and excise laws and procedures, the contents of this agreement and with the requirements

relating to the business of the licensee and the customs and excise administration in respect of such business and is able to answer any question that may be required to be answered for purposes of the Act;

3. Licensee is aware of the obligation to account for all dutiable goods produced or stored and at all times to be able to prove the fulfilment of any obligation relating to the payment of duty, export, removal in bond or other movement of such goods as may be required in terms of any provision of this Act.

4. Licensee understands and accepts—

- (i) that any application for a new licence or renewal of a licence may be refused on the grounds specified in section 60(2) and where any of the provisions are applicable licensee undertakes to disclose all relevant facts when applying for such licence;
- (ii) the condition prescribed in the rules for section 60 that at least the licensee or one of its directors, members, partners, trustees or employees, as the case may be, transacting the customs and excise related business with clients of such business at the premises or in the area for which the licence is issued shall have sufficient knowledge of customs and excise laws and procedures to transact such business efficiently and in compliance with the provisions of such laws and procedures.

5. Licensee undertakes to render such proof, including audited financial statements, as may be required from time to time in order to prove that it has, and is maintaining, sufficient financial resources to conduct its business in an efficient and responsible manner.

6.(a) The licensee chooses *domicilium citandi et executandi* at: .....

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(b) The Commissioner chooses *domicilium citandi et executandi* at: .....

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7. Thus done and signed at: ..... on this .....

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Licensee

Witness

Thus done and signed at: ..... on this .....

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for and on behalf of Commissioner

Witness"

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