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# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

*As 'n Nuusblad by die Poskantoor Geregistreer*

*Registered at the Post Office as a Newspaper*

Verkoopprijs • Selling price  
(AVB uitgesluit/GST excluded)  
Plaaslik **50c** Local  
Buitelands 70c Other countries  
Posvry • Post free

Vol. 276

KAAPSTAD, 29 JUNIE 1988

No. 11377

CAPE TOWN, 29 JUNE 1988

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1266.

29 Junie 1988

No. 1266.

29 June 1988

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

■. 69 van 1988: Wysigingswet op Doeane en Aksyns, 1988.

No. 69 of 1988: Customs and Excise Amendment Act, 1988.

## CUSTOMS AND EXCISE AMENDMENT ACT, 1988

Act No. 69, 1988

## GENERAL EXPLANATORY NOTE:

- [                    ] Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Customs and Excise Act, 1964, so as to empower the Commissioner for Customs and Excise to allow certain spirits to be used or disposed of; to provide further for the manufacture of excisable goods and the collection of excise duty, and for the circumstances in which the most-favoured-nation-rate of duty shall apply in respect of certain goods; to determine the documents to be produced on the exportation of goods; to further regulate the determination of the value for customs duty purposes of imported goods; to provide further for establishing the value for excise duty purposes of certain goods manufactured in the Republic; to further regulate the granting of refunds of duty and fuel levy in respect of distillate fuel; to provide for the recovery of certain amounts not duly capable of set-off; to provide for the set-off of certain provisional refunds of duty and fuel levy against amounts due in respect of that duty and levy; to amend Schedule No. 1 to the said Act; to provide for the continuation of certain amendments of Schedules Nos. 1, 2, 3, 4, 5, 6 and 7 to the said Act; to readjust the dates of clearing of certain motor vehicle models; and to authorize the Commissioner for Customs and Excise to refund to certain persons in any state which formerly formed part of the Republic, and to pay to any such state, part of any duty or fuel levy paid in the Republic on any petrol or distillate fuel entered or removed for consumption in that state; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)*  
*(Assented to 17 June 1988.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 34 of Act 91 of 1964, as amended by section 15 of Act 98 of 1980 and section 3 of Act 86 of 1982**

- 5 1. Section 34 of the Customs and Excise Act, 1964 (hereinafter referred to as the principal Act), is hereby amended by the addition of the following subsection:
- 10 “(6) Notwithstanding the provisions of subsection (5), the Commissioner may allow spirits so manufactured to be used or disposed of in such circumstances and at such places as he may deem fit and subject to such conditions as he may impose in each case.”.

**Amendment of section 36A of Act 91 of 1964, as inserted by section 11 of Act 105 of 1969 and substituted by section 4 of Act 52 of 1986**

2. (1) Section 36A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- 15 “(1) Every manufacturer of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1, every owner of sales duty goods or

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- excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured for him partly or wholly from materials owned by such owner, and every **[manufacturer of and]** dealer of a class designated by the Commissioner, in pearls, precious and semi-precious stones, precious metals, **[rolled]** metals clad with precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or **[rolled]** metals clad with precious metals (excluding imitation jewellery), shall license his premises as a special customs and excise warehouse for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 in terms of the provisions of this Act, and no such manufacturer, owner or dealer shall manufacture or deal in or with sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 unless he has so licensed his premises: Provided that the Commissioner may in his discretion and to the extent he deems fit, exempt, on the conditions imposed by him in each case, any such manufacturer or owner **[or dealer]** from the requirements of this Act.”.
- (2) Subsection (1) of this section shall be deemed to have come into operation—
- (a) in respect of the deletion of the words “manufacturer of and”, the insertion of the words “of a class designated by the Commissioner” and the deletion of the words “or dealer”, on 9 July 1969; and
- (b) in respect of the deletion of the word “rolled” and the insertion of the words “metals clad with”, on 1 January 1988.

Amendment of section 39 of Act 91 of 1964, as amended by section 1 of Act 85 of 1968, section 14 of Act 105 of 1969, section 1 of Act 93 of 1978, section 4 of Act 110 of 1979, sections 8 and 15 of Act 98 of 1980 and section 10 of Act 84 of 1987

3. Section 39 of the principal Act is hereby amended by the insertion after subsection (2A) of the following subsection:
- “(2B) The Commissioner may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods exported or any class or kind of goods exported or any goods exported in circumstances or to a destination specified by him.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986 and section 15 of Act 84 of 1987

4. (1) Section 47 of the principal Act is hereby amended—
- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “The **[most favoured nation rate]** most-favoured-nation-rate of duty specified **[in Column IV]** in any tariff heading or subheading in Part 1 of Schedule No. 1 shall apply to any goods to which such heading or subheading relates if such goods were produced or manufactured in any territory—”; and
- (b) by the deletion of subsection (4).
- (2) Subsection (1) of this section shall be deemed to have come into operation on 1 January 1988.

Amendment of section 66 of Act 91 of 1964, as substituted by section 14 of Act 86 of 1982

5. Section 66 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (8) of the following paragraph:
- “(d) the cost of transportation, **[and the cost of]** loading, unloading, handling **[transport]** and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle, or in a container as defined in section 1 (2), at that port or place, ready for export to the Republic;”.

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## Amendment of section 67 of Act 91 of 1964, as inserted by section 15 of Act 86 of 1982

6. Section 67 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph:

- 5 “(e) to the extent that [it is] they are not included in the price actually paid or payable for the goods, the cost of transportation, [and the cost of] loading, unloading, handling and insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle, or in a container as defined in section 1 (2), at that port or place, ready for export to the Republic.”
- 10

## Amendment of section 69 of Act 91 of 1964, as amended by section 22 of Act 105 of 1969, section 6 of Act 93 of 1978, section 15 of Act 98 of 1980 and section 9 of Act 101 of 1985

7. (1) Section 69 of the principal Act is hereby amended—

- 15 (a) by the substitution in subsection (1) for the words preceding the proviso of the following words:

20 “Whenever it is necessary, for the purpose of assessing the excise duty on any goods manufactured in the Republic, to determine the value of such goods, the value thereof shall, subject to the provisions of this section, be taken to be the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale, for consumption in the Republic, for purposes of trade in the principal markets of the Republic in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any independent merchant wholesaler in the Republic under fully competitive conditions, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser, but excluding the excise duty or fuel levy on such goods:”; and

25

- 30 (b) by the substitution for subsection (4) of the following subsection:

35 “(4) (a) Notwithstanding the provisions of subsections (1) and (2), the value for excise duty purposes of any goods manufactured in the Republic and specified in Section B of Part 2 of Schedule No. 1 (other than goods [entered in terms of] specified in item 617.01 of Schedule No. 6), shall be the value for excise duty purposes of such goods calculated or determined in terms of subsection (1) or (2), plus any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods.

- 40 (b) The provisions of subsection (3) or (4) of section 70 shall *mutatis mutandis* apply to the calculation or determination of the value for excise duty purposes of any goods specified in [Section B of Part 2 of Schedule No. 1 and entered in terms of] item 617.01 of Schedule No. 6.”

- 45 (2) Paragraph (b) of subsection (1) of this section shall be deemed to have come into operation on 31 July 1985.

## Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 24 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 8 of Act 93 of 1978, section 10 of Act 110 of 1979, section 15 of Act 98 of 1980, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986 and section 23 of Act 84 of 1987

8. (1) Section 75 of the principal Act is hereby amended—

- 55 (a) by the substitution for subparagraph (iv) of paragraph (f) of subsection (1) of the following subparagraph:

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- 5           “(iv) the extent of the refund referred to in subparagraph (i) shall be the rate of such refund specified in such item of Schedule No. 5 or 6 [at the last date of any period for which such refund in respect of such use is claimed] in operation on the date of issue of the invoice concerned, referred to in subsection (4A) (b) (ii);”;
- (b) by the addition to paragraph (f) of subsection (1) of the following subparagraph:
- 10           “(v) if the extent of such refund is amended and for any reason any liability to repay any refund of duty or fuel levy in respect of any quantity of fuel which the user may incur cannot be assessed or the amount of duty or fuel levy refundable to such user in terms of any item of Schedule No. 5 or 6 cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to such user, shall be determined by the Commissioner according to the information at his disposal;”;
- 15
- (c) by the addition to paragraph (g) of subsection (1) of the following subparagraph, the existing paragraph becoming subparagraph (i) thereof:
- 20           “(ii) notwithstanding the provisions of section 47 (1), any portion of the fuel levy remaining, after deducting the amount refunded by such administration or by the Commissioner of any fuel levy on petrol and distillate fuel entered or removed for consumption in the territory administered by such administration, shall, if the Minister approves, be paid by the Commissioner to the administration referred to in subparagraph (i).”; and
- 25
- (d) by the insertion after subsection (1) of the following subsection:
- 30           “(1A) (a) Notwithstanding anything to the contrary in this Act contained, the Commissioner may in his discretion and subject to such conditions, including conditions as to the registration of the person concerned, as he may in each case impose, allow in respect of any refund referred to in subsection (1) (f) (i) any person to grant a provisional refund of duty and fuel levy to any registered user of distillate fuel who purchases such fuel from that person.
- 35           (b) Any such provisional refund shall be granted in accordance with an estimate of intended use furnished by such user to the person concerned.
- (c) The Commissioner may pay to such person or allow him to set off in terms of section 77 against duty or fuel levy for which he is liable, any amount which he granted to such registered user at such times and on furnishing of such particulars as the Commissioner may specify.
- 40           (d) Any amount paid in error by the Commissioner to such person shall be recoverable from such person as provided in section 76A.
- (e) The Commissioner may cancel the said registration of such person if such person claims or receives any amount or payment to which he is not entitled.
- 45           (f) Any provisional refund granted by such person to such user shall, subject to the provisions of paragraphs (g), (h) and (i), be deemed to be a refund paid by the Commissioner in terms of subsection (1) (f) (i).
- 50           (g) (i) Any user who has been granted such a provisional refund shall, in relation to the actual use by him of the fuel concerned, furnish the Commissioner at such times as may be prescribed by regulation, with a declaration in such form and supported by such documents as may be prescribed by regulation.



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- (ii) Such declaration shall be deemed to be an application for a refund referred to in subsection (4A) (b) (i).
- (h) (i) If the Commissioner is satisfied after considering the said declaration that the provisional refund granted to the user concerned either exceeds or falls short of any amount refundable in terms of item 533.01 or 540.02 of Schedule No. 5 or item 609.05.10 or 640.03 of Schedule No. 6, such excess shall be paid by that user upon demand by the Commissioner and any shortfall shall be refunded by the Commissioner to him.
- (ii) If that user fails to pay the amount demanded in terms of subparagraph (i), such amount shall be recoverable in terms of section 76A.
- (i) Any user of fuel who has been granted a provisional refund and who fails to comply with the provisions of paragraph (g) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the items of Schedule No. 5 or 6 referred to in paragraph (h), and the amount of such refund shall be deemed to be a refund not duly payable to such user and shall be recoverable in terms of section 76A.”.
- (2) (a) Paragraph (c) of subsection (1) of this section shall be deemed to have come into operation on 1 July 1987.
- (b) Paragraphs (a), (b) and (d) of subsection (1) of this section shall be deemed to have come into operation on 1 November 1987.

**Amendment of section 76A of Act 91 of 1964, as inserted by section 25 of Act 84 of 25 1987**

9. (1) Section 76A of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1) thereof:
- “(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section 77 (1) (a).”.
- (2) Section (1) of this section shall be deemed to have come into operation on 1 November 1987.

**Amendment of section 77 of Act 91 of 1964, as substituted by section 26 of Act 105 of 1969 and amended by section 3 of Act 68 of 1973, section 15 of Act 98 of 1980, section 21 of Act 86 of 1982 and section 26 of Act 84 of 1987**

10. (1) Section 77 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) Any amount due to a licensee of a customs and excise warehouse who, in terms of the regulations, is permitted to pay excise duty, sales duty or fuel levy monthly or quarterly, in respect of such duty paid by him for which he was not liable or any provisional refund granted by him in terms of section 75 (1A) or which is refundable to him in terms of item 534.00 of Schedule No. 5 or any item of Schedule No. 6 or 7 may, at any time within a period of two years from the date on which such amount first becomes due, be set off against any amount for which such licensee subsequently becomes liable in respect of excise duty, sales duty or fuel levy, provided the accounts or bills of entry submitted by such licensee in respect of the payment of any amount against which any amount so due to him has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars of the excise duty, sales duty or fuel levy so paid and a full account of the circumstances under which the payment thereof took place and by such documentary evidence as the Commissioner may in each case require.”.

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(2) Subsection (1) of this section shall be deemed to have come into operation on 1 November 1987.

Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984 and section 14 of Act 101 of 1985

10 11. (1) Schedule No. 1 to the principal Act is hereby amended to the extent set out in the Schedule to this Act.

(2) Subject to the provisions of section 58 (1) of the principal Act, this section shall be deemed to have come into operation on 16 March 1988.

Continuation of certain amendments of Schedules Nos. 1, 2, 3, 4, 5, 6 and 7 to Act 91 of 1964

12. (1) Every amendment of Schedules Nos. 1, 2, 3, 4, 5, 6 and 7 to the principal Act made under section 48 (1) and (2), section 56 (1) and (1A) or section 75 (15) of the principal Act prior to 5 February 1988 shall not lapse by virtue of the provisions of section 48 (6), 56 (7) or 75 (16) of the principal Act.

20 (2) The amendment of Schedule No. 6 to the principal Act made under section 75 (15) of the principal Act by Government Notice No. R.481 of 16 March 1988, shall not lapse by virtue of the provisions of section 75 (16) of the principal Act.

Application of tariff item 117.05.15 of Section A of Part 2 of Schedule No. 1 to Act 91 of 1964 in relation to motor vehicle models cleared during certain periods

25 13. Any motor vehicle models cleared during the periods 26 August 1987 to 31 August 1987 and 26 November 1987 to 30 November 1987 shall, at the request of any motor vehicle manufacturer to the Commissioner for Customs and Excise, for the purposes of tariff item 117.05.15 of Section A of Part 2 of Schedule No. 1 to the principal Act, be deemed to have been cleared during the periods 26 May 1987 to 25 30 August 1987 and 26 August 1987 to 25 November 1987, respectively.

Payments of duty and fuel levy to other states and users in such states

14. (1) Notwithstanding anything to the contrary in the principal Act contained, the Commissioner for Customs and Excise may, in respect of any duty or fuel levy paid in the Republic on any petrol or distillate fuel entered or removed for 35 consumption in any state which formerly formed part of the Republic—

(a) refund such duty or fuel levy in part to any user in such state who applies for such refund in terms of section 75 (1) (f) (i) of that Act; and

40 (b) pay, after deducting any refund referred to in paragraph (a), any portion of the balance of such fuel levy as may be authorized by the Minister of Finance to the state concerned.

(2) (a) Any application to and payment made by the said Commissioner in terms of subsection (1) (a) shall be deemed to have been made to and paid by such state.

45 (b) For the purposes of subsection (1) (b), the said Commissioner may make such payments on the basis of any documents, relating to the movement of such petrol or distillate fuel, in possession of any person as may be determined by him.

(3) Subsections (1) and (2) of this section shall be deemed to have come into operation on 1 July 1987.

50 Short title

15. This Act shall be called the Customs and Excise Amendment Act, 1988.

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## CUSTOMS AND EXCISE AMENDMENT ACT, 1988

## Schedule

## AMENDMENTS TO SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE ACT, 1964

Tariff item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.10		By the substitution for tariff item 104.10 of the following:		
"104.10 .10	22.03	<b>BEER MADE FROM MALT:</b> Of a relative density before fermentation not exceeding 1 040° (excluding sorghum beer as defined in the Sorghum Beer Act, 1962 (Act No. 63 of 1962))	3 447c/100 £	3 446c/100 £
		Plus a suspended duty of:		
		(i) In operation	Nil	Nil
		(ii) Maximum rate	275c/100 £	275c/100 £
.20		Of a relative density before fermentation exceeding 1 040° but not exceeding 1 050°, which is cleared ex any customs and excise manufacturing warehouse during any financial year, or which is imported into the Republic, or which is illicit beer (excluding sorghum beer as defined in the Sorghum Beer Act, 1962 (Act No. 63 of 1962)):		
		(1) On the first 4 500 000 £ or any quantity less than 4 500 000 £ so cleared during a financial year	3 722c/100 £	—
		(2) On the quantity so cleared during a financial year which is more than 4 500 000 £ but not exceeding 9 000 000 £	3 854c/100 £	—
		(3) On the quantity so cleared during a financial year which is more than 9 000 000 £ but not exceeding 18 000 000 £	3 986c/100 £	—
		(4) On the quantity so cleared during a financial year which is more than 18 000 000 £ but not exceeding 27 000 000 £	4 118c/100 £	—
		(5) On the quantity so cleared during a financial year which is more than 27 000 000 £ but not exceeding 36 000 000 £	4 250c/100 £	—
		(6) On the quantity so cleared during a financial year which is more than 36 000 000 £	4 382c/100 £	—
		(7) If duty is paid on illicit beer	4 382c/100 £	—
		(8) If imported	—	3 700c/100 £
.30		Of a relative density before fermentation exceeding 1 050° (excluding sorghum beer as defined in the Sorghum Beer Act, 1962 (Act No. 63 of 1962))	4 481c/100 £	3 920c/100 £
		Plus, for every degree of relative density before fermentation exceeding 1 080°	22c/100 £	22c/100 £"
104.20		By the substitution for tariff items 104.20.10, 104.20.15 and 104.20.25 of the following:		
"10 .10		Wine spirits, manufactured in the Republic by the distillation of wine	101 398c/100 £ of absolute alcohol	—
.15		Spirits, manufactured in the Republic by the distillation of any sugar cane product	111 361c/100 £ of absolute alcohol	—
.25		Spirits, manufactured in the Republic by the distillation of any grain product	115 868c/100 £ of absolute alcohol"	—
104.20		By the substitution for tariff items 104.20.29, 104.20.30 and 104.20.40 of the following:		
"29 .29		Other spirits, manufactured in the Republic	105 835c/100 £ of absolute alcohol	—
.30		Imported spirits of any nature, including spirits in imported spirituous beverages (excluding liqueurs, cordials and similar spirituous beverages containing added sugar) and in compound alcoholic preparations of an alcoholic strength exceeding 1,713 per cent alcohol by volume	—	91 785c/100 £ of absolute alcohol or 40 326c/100 £



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Tariff item	Tariff heading	Description	Rate of duty	
			Excise	Customs
.40		Spirits of any nature in imported liqueurs, cordials and similar spirituous beverages containing added sugar, with or without flavouring substances	—	91 785c/100 ℓ of absolute alcohol"
104.30		By the substitution for tariff items 104.30.20 and 104.30.30 of the following:		
..20		Cigarettes	14,5c/10 cigarettes plus 56c/kg tobacco content	14,5c/10 cigarettes plus 56c/kg tobacco content
		Plus in respect of cigarettes the mass of the tobacco of which exceeds 1,5 kg/1 000 cigarettes	672c/kg tobacco content	672c/kg tobacco content
.30		Cigarette tobacco	14,5c/50 g or fraction thereof plus 213c/kg tobacco	14,5c/50 g or fraction thereof plus 213c/kg tobacco
		Plus a suspended duty of:		
		(i) In operation	Nil	Nil
		(ii) Maximum rate	73c/kg tobacco	73c/kg tobacco"