

Using the internal administrative appeal mechanism to resolve Sars customs disputes

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The Customs and Excise Act, 1964 grants significant enforcement powers to certain South African Revenue Service (Sars) divisions. However, disputes with the tax collector in this sphere can be extremely time-consuming and onerous.



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Sars' customs division's responsibilities include exercising strict control over the movement of goods and people into and out of South Africa, as well as levying and collecting customs duties (primarily on imported goods). The excise division's responsibilities include levying and collecting excise duties on specific categories of imported and locally manufactured goods.

In this article, we briefly consider the main dispute resolution mechanism provided by the Customs Act, namely the internal administrative appeal. Other mechanisms that may be useful in a customs and excise dispute (the request for reasons, the suspension application, and settlement by way of compromise), and customs and excise litigation against Sars.

Example

As a basic practical example, consider a scenario where Sars concludes, following a compliance audit, that an importer has underpaid customs duty on the importation of a specified product into South Africa. The service will notify the importer of its intention to demand the underpaid duties. Such a finding could be based on, for example, an incorrect valuation of the imported product, failure to retain and submit sufficient supporting documents, or an incorrect classification of the imported product.

The importer (the aggrieved party) may, in turn, have valid grounds to dispute the Sars finding. These could include that it did in fact satisfy all documentary requirements, that its valuation or classification was correct, or that Sars' finding is based on factual or legal errors.

Whatever the grounds for objection, the aggrieved importer can now use the internal dispute resolution remedies provided under the Customs Act. The first step is typically to make detailed legal submissions to Sars in response to the notice of intention to assess. The goal is to convince Sars that the notice of intention should be withdrawn, and no amount demanded. This is an appropriate time to instruct an expert legal advisor to assist with the dispute.

Appeal

If Sars does not accept those submissions, it will issue a letter of demand. At that point, the debt becomes due and payable, unless a formal suspension application is submitted to and granted by Sars. The aggrieved importer may then prepare and submit an internal administrative appeal in terms of Part A of Chapter XA of the Customs Act.

The internal administrative appeal should set out detailed legal arguments in support of the aggrieved party's case and should be carefully drafted as a possible precursor to litigation.

If the appeal complies with the relevant rules and is accepted as valid and complete, Sars will refer it to the appropriate internal administrative appeal committee for consideration. The appeal committee may require additional information or even invite oral submissions. Usually, it will consider the appeal as submitted and issue a written decision in due course.

In a best-case scenario for the aggrieved party, the appeal committee may uphold the appeal and thus dispose of the matter (which may trigger a refund of the amount originally demanded and paid). Such a decision may be wholly or partially in favour of the aggrieved party, and it may overturn all or part of Sars' original demand. But if any amount is still found to be payable, the aggrieved party must consider whether to abide by that decision or take further steps to resolve the dispute.

Other mechanisms

If the aggrieved party is not satisfied with the appeal decision, it may apply to Sars for the matter to be resolved by means of alternative dispute resolution or pursue one or more of the other interim mechanisms provided under the Customs Act or proceed to litigation.

Licensed clearing agents offer crucial services to individuals and corporates affected by the Customs Act (including importers and manufacturers of excisable goods). Their services include assistance with clearing goods for import and export, procuring the release of detained goods, maintaining general customs and excise compliance, and facilitating the payment of duties and levies imposed by the Customs Act. However, significant customs and excise disputes with Sars should be referred to expert legal advisors as early as possible.

ABOUT THE AUTHOR

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