THE SOUTH AFRICAN ASSOCIATION OF FREIGHT FORWARDERS

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4 September 2015
The Standing Committee on Finance
Parliament
Cape Town

Attention: **Mr. Allen Wicomb**

Dear Mr. Wicomb,

INVITATION TO SUBMIT WRITTENCOMMENT ON THE DRAFT TAX ADMINISTRATION LAWS AMENDMENT AND TAXATION LAWS AMENDMENT BILLS, 2015

The South African Association of Freight Forwarders [SAAFF] hereby submits commentary on the Tax Administration Laws Amendment Bill, 2015 [TALAB].
The SAAFF will make oral representations and hereby requests to be informed of the date, time and venue In order to prepare accordingly.
Commentary:
Amendment 24. (1) Section 99 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (5) of the following subsection: "(5) Any liability in terms of subsection (1), (2) or (4)*(a)* shall cease after the expiration of a period of **[two]** three years from the date on which it was incurred in terms of any such subsection.".

Comment: It is noted that the amendment selectively increases the prescription period for liability from two to three years.
In clause 2.24. of the draft memorandum on the objects of the Draft Tax Administration Laws Amendment Bill, 2015 it is stated that the proposed amendment aligns the prescription period for liability to the general prescription period of three years.

In noting that the Customs Duty Act, 30 of 2014 [CDA] in section 69. (1) provides that a refund must be applied for within three years of the date of clearance and section 89. (1) provides for the prescription period for liability to be three years, it is not understood why only the prescription period for liability has been increased from two to three years in section 99 (5) of the Customs and Excise Act, 91 0f 1964.

It is therefore recommended that to achieve the stated objective of aligning prescription periods to three years, sections 76 (4); 76B (1)(a); 76B (1)(b); 76B (1)(d); 76B (1)(e) of the Customs and Excise Act, 91 of 1964 be amended accordingly to allow for a period of three years.

Amendment 65. Section 227 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraphs *(b)* and *(d)* of the following paragraphs:
"*(b)* involve a 'default' which has not **[previously been disclosed]** occurred within five years of the disclosure of a similar 'default' by the applicant or a person referred to in section 226(3);
(d) involve **[the potential imposition of an]** a behaviour referred to in column 2 of the understatement penalty **[in respect of the 'default']** percentage table in section 223;".

Comment: In the context of compliance with the tax laws that govern behaviour in self-assessment the Customs and Excise Act, 91 of 1964 and in particular sections 44 (11)(a)(i) and (ii) and 99 (2)(a) provide for a prescription period for liability, generally two years, where after liability ceases.

Furthermore section 40(3)(a) of the Customs and Excise Act 91, of 1964 places an obligation on the declarant on discovering that a declaration is invalid or does not comply with the provisions of the Customs and Excise Act, 91 of 1964 to adjust that declaration without delay.
In addition section 89 (1) of the Customs Duty Act, 30 of 2014 determines the prescription period for liability to be three years.

The amendment to paragraph (b) of section 277 of the Tax Administration Act, 2011 to limit voluntary disclosure of a default to "involve a default which has not occurred within five years of the disclosure of a similar default by the applicant" would appear not to align with the provisions in the Customs and Excise Act, 91 0f 1964 and Customs Duty Act, 30 of 2014.

The Customs Control Act, 31 of 2014 in sections 863 through 873 provides for voluntary disclosure relief in respect of a duty in terms of the Customs Duty Act, 30 of 2014 or a duty or levy in terms of the Excise Duty Act. The Customs Duty Act in section 873 provides that Rules, which have as yet not been made, to facilitate implementation of voluntary disclosure may include Rules prescribing the form and format and contents of voluntary disclosure relief applications including time frames and agreements.

Section 873 of the Customs Control Act has created an anomaly viz-a-viz section 277 of the Tax Administration Act 2011 in that duty in terms of the Customs Duty Act does not extend to value-added tax on importation of goods. The question in this instance is to whom such applications should be directed.

In the circumstances it is recommended that paragraph (b) in section 277 of the Tax Administration Act, 2011 be amended to read:
(b) involve a default which has not occurred within five years of a similar default by the applicant or a person referred to in section 226 (3), but excluding any unintended default on a customs declaration.

Alternatively and in the absence of draft Rules, amend section 865 of the Customs Control Act, 31 of 2014 by the insertion of sub-section (4) A voucher of correction submitted electronically with the expression "voluntary disclosure program" (VDP) endorsed in the additional information field, and the acceptance of such voucher of correction by the customs authority, shall be deemed to be granting of voluntary disclosure relief in relation to the customs declaration concerned.

Amendment 81. Section 201 of the Customs Duty Act, 2014, is hereby amended by—

(b) the addition of the following subsection:
"(4) No fixed amount penalty may be imposed in terms of this section for a breach consisting of a failure to submit to the customs authority full or accurate information, other than information that may result in revenue prejudice, if the breach was committed inadvertently and in good faith.".

Comment: The amendment is noted and supported.

Amendment 82. Section 202 of the Customs Duty Act, 2014, is hereby amended by the substitution for subsection (3) of the following subsection:
"(3) The customs authority may for a non-prosecutable breach of this Act listed in terms of section 201(1) consisting of a failure to submit to the customs authority full or accurate information other than information that may result in revenue prejudice, impose in terms of subsection (1) a fixed amount penalty for the breach only after it has issued a warning for the same or a similar type of breach to the person who committed the breach.".

Comment: It is noted, in pertinent part, in the language of the amendment that the customs authority may for a non-prosecutable breach consisting of a failure to submit full or accurate information impose a fixed amount penalty only after it has issued a warning for the same or similar type of breach to the person who committed the breach.
In considering the number of transactions or for that matter the number of interactions between persons and the customs authority, specifically in relation to the Customs Duty Act, it is recommended that if the non-prosecutable breach is not related to the safety and security of the citizens or the environment of the Republic or does not breach any international agreement then a letter of warning should suffice.
It should not be necessary to impose a fixed amount penalty for a breach which is no more than a clerical error. In this regard the person should where appropriate and in the consideration of the SARS be subjected to a program of compliance improvement.
The SARS Customs has pre-empted the notion of compliance improvement by virtue of the "preferred trader" initiative and based on that experience and the stated requirement of competency in the Customs Legislation, a compliance improvement program will best serve the interest of SARS and support the skills and knowledge development in general.

General comment:

COMMON DISPUTE RESOLUTION PROCEDURES FOR CUSTOMS, EXCISE AND OTHER TAXES

The dispute resolution procedures contained in Chapter 37 of the Customs Control Act, 31 of 2014 were discussed in the SARS Customs workshop where it was indicated that:
EXTRACT OF THE SARS RESPONSE:
"RECONSIDERATION OF DECISIONS & DISPUTE RESOLUTION
• **DISPUTE RESOLUTION**
- Detailed comments were received relating to the applicability of the TAA provisions regarding objection and appeal to the Control Act and how this would work
• The relevant provisions of the TAA will be amended to provide for the objection and appeal regime in that Act to also apply to customs matters, and for customs matters to be heard in the Tax Court. The rules of the Tax Court and Tax Board will be reviewed as part of this process
• The current internal appeal process will fall away and the objection process as contained in the TAA will apply

• These amendments will be published for comment".

In the presentation to the Standing Committee on Finance by National Treasury and SARS on 4 August 2015 in slide 64 under the title: **Budget 2015 proposal: Common dispute resolution procedures for customs, excise and other taxes**, it is stated:
The proposal is complex of nature, requires numerous amendments to legislation and drafting of dispute resolution rules and will only be finalised by next year. The SAAFF agrees that this is a complex exercise and appreciates the efforts to finalise the common dispute resolution procedures in 2016.

Sincerely,

David Logan
CEO - SAAFF