

CUSTOMS

EXTERNAL POLICY

PROVISIONAL PAYMENTS

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1 SUMMARY OF MAIN POINTS

- a) PPs are lodged to secure revenue (duties, levies and VAT) which is due or may become due to SARS Customs pending compliance of a PP condition and in exceptional cases where additional security is required usually for a short period of time.
- b) Where a client contravenes the Customs and Excise Act, a deposit is lodged in terms of Section 91. Refer to SC-CO-01-05.
- c) The DA 70 (hard copy) must not be used for:
- Import Custom clearance declaration (CCD) based PPs (see SC-CF-55); or
 - Travellers - refer to SC-PA-01-01.
- d) This document **does not** apply to:
- Completion of DA 70 (SC-CF-25-A01);
 - Excise provisional payments (refer to SE-PP-02);
 - Payment Rules - GEN-PAYM-01-G01;
 - Declarations and PPs for non-registered clients is catered for in the iCBS; and
 - PPs accepted on the Passenger Processing System (PPS) (SC-PA-01-11).
- e) Letters of undertaking between SARS and other Government Agencies (OGAs) maybe used in lieu of a PP.
- f) Finalisation of PPs prior to this implementation date will remain manually until processing is completed.

2 POLICY

2.1 Uses of a provisional payment

- a) Conditions of all PPs must be complied with within a prescribed period as indicated in the table below.
- b) A reminder notification will be forwarded to the client before the PP reaches the expiry date.

i) Types captured on import declarations only	Calendar days allowed
A. Provisional Payment lodged in terms of Section 57A pending the investigation to the imposition of an anti-dumping (PPA) on goods imported.	180
B. Provisional Payment lodged in terms of Section 57A pending the investigation to the imposition of a countervailing (PPC) on goods imported.	180
C. Provisional Payment lodged in terms of Section 57A pending the investigation to the imposition of a safeguard duty (PPG) on goods imported.	180
D. Provisional Payment lodged to cover duties and VAT on goods temporary admitted under rebate pending production of proof of export of the goods, originally imported, within 180 days or pending the production and processing of an amendment CCD for "home use" bringing duties and/or VAT to account (PPT).	180
E. To cover duties/VAT conditional release at time of submitting an import CCD (PPR).	30
F. Provisional Payment lodged to cover possible under-entry in duties and VAT pending production of documents: invoice, transport document, proof of payment, literature, etc. (excluding permits/certificates) (PPR).	30
G. Provisional Payment lodged, in terms of Section 107(2) on goods which were released under a special undertaking	30

i) Types captured on import declarations only		Calendar days allowed
	[embargo - (PPE)] to the indicated premises pending Customs examination and adjustment to the declaration if necessary and finalisation of the Service Manager inspection report.	
H.	Provisional Payment lodged in terms of Section 47(9)(a) to cover a possible under entry of duty and VAT, in order to obtain release of the goods pending submission of evidence to motivate an appeal and finalisation of Service Manager inspection report (TDN) (PPR).	180
I.	Provisional Payment lodged in terms of Section 65(4)(a) to cover a possible under-entry of Duty and VAT, in order to obtain release of the goods pending submission of evidence to motivate an appeal and finalisation of Service Manager inspection report within 180 days determination (VDN) (PPR).	180
ii) PPs lodged for contravention and forfeiture - CCD and manual PPs		
A.	Provisional payment pending a decision on the imposition of a suitable penalty in terms of Section 91 (PEN).	50
B.	Provisional payment pending a decision on the imposition of suitable forfeiture amount (FOR).	50
iii) Manual provisional payments lodged for the following reasons		
A)	Finalisation of a carnet (insert carnet holder's name and carnet number) to cover possible duties, levies, and/or VAT (refer to SC-TA-01-03 and SC-TA-01-05).	90
B)	Non-declaration types of contraventions e.g. late submission of acquittal documents.	30
C)	Provisional payments lodged for export declaration(s).	30

2.2 Submitting an import declaration based provisional payment

- a) PPs for import declarations must be submitted on the import (amended) CCD. (SC-CF-55).
- b) All import CCD based PPs must be declared per line except in the case of PPs lodged for an embargo release which will be declared on line one (1) of a CCD (SC-CF-55).
- c) The client must insert the specific abbreviation in the duty tax type field on the import/amended CCD for a PP and insert the PP amount (SC-CF-04).
- d) No PPs must be accepted pending the production of general import permits, EUR1 certificates, etc. PPs may only be accepted pending the production of permits required under the provisions of other Acts or organisations if written evidence is received from these organisations that a valid permit is in existence and a facsimile copy of such permit is forwarded to the Controller/Branch Manager. (E.g. permit issued by the Commissioner of SA Police Service governing the importation of dangerous weapons, or goods subject to release by the Plant Inspector.) These PPs should not be less than R 5000.
- e) PPs must always indicate a specified time period and conditions that must be met.
- f) A client can lodge a PP as prescribed with an import CCD for processing, when, for example:
 - i) Temporary imports under Schedule 4 - the reason for lodging such PP will be to cover duties and Value-Added Tax (VAT) pending proof of export.
 - ii) In respect of anti-dumping duty, safeguarding and countervailing.
 - iii) Provisional declaration – where goods are imported and at the time the importer is not able to declare the correct tariff heading or value for Customs duty purpose due to a dispute and “on consignment goods” where the value is not known at time of importation. The importer is then requested to lodge a PP to cover the additional duties and taxes that may be applicable as a result of the dispute.
 - iv) In cases of “possible underpayments” in duty on CCDs, clients are not required to sign the application in terms of Section 91 portion of a PP. An example of this would be where a local

tariff determination is not accepted by the importer, the matter would be referred to Head Office for tariff determination on a DA 314 and a PP would be lodged to cover the possible duties and taxes which may become payable.

2.3 Completion and submission of a manual provisional payment

- a) A DA 70 (hard copy) must be submitted manually for non-declaration PPs. Completion of the DA 70 is explained in SC-CF-25-A01.
- b) The manual submission and processing of a DA 70 (hard copy) will only be used for PPs lodged for the following reasons:
 - i) Cash desk for unregistered clients (BP-03);
 - ii) Carnets (SC-TA-01-04 and SC-TA-01-06);
 - iii) Non-declaration types of contraventions e.g. late submission of acquittal documents; or
 - iv) Exports.
- c) The PP (hard copy) must be submitted at the SARS office closest to the client's business premises and must be completed by an Officer and signed by a client or completed by a client.
- d) The **client** must complete the prescribed form and ensure all fields are completed in accordance with the completion manual (SC-CF-25-A01) before submitting it to the Branch Office.
- e) When receiving the PP, the Branch Officer will check that it is properly completed, signed and verifies the period and amount for compliance.
- f) The client must also ensure that PPs are correctly completed; a copy of the inspection report or a copy of the official letter to the client is produced and attached to the PP.
- g) If any mistakes are found with the completion of the PP, the PP will be rejected and the reason for rejection will be written on the back of the PP (this would be the fold over the bottom right hand corner of the form). The Officer rejecting the PP will print his/her name and provide a contact number for any queries relating to the rejection. (SC-CF-25-A01).
- h) The PP is handed back to the client, or placed in the client's box.
- i) If correct, the Enquiry Officer will sign the PP in the field "for official use only" and complete the internal process.
- j) The first copy of the PP and a copy of the CEB01 which reflects the case number and PRN is handed to the client, alternatively the documents are placed in the client's box as notification that payment should be made.
- k) The client must use the payment reference number (PRN) on the CEB01 to make payment.
- l) The case number is the unique PP number which must be used for liquidation purposes.
- m) The Customs Officer or Team must receive a processed copy from the client which will serve as proof of payment.
- n) In instances where an amended declaration must also be processed, the client must insert the PP case number on the amended CCD and submit to Customs for processing.

2.4 Payment process

- a) No refund or payment can be made if the banking details are not captured and authenticated on the relevant system. For the process of authentication refer to SC-CF-19.
- b) Deposits on PP in lieu of bonds (SC-SE-05) at time of licensing or registration are not accepted for surety for any new applications.

- c) Deposits will only be accepted for duty and/or VAT which are due or may become due, pending compliance with a specified condition or obligation to Customs within a stipulated period e.g. the **declaration process**.
- d) Payments made on a PP can only be made via EFT/eFiling or cash. The deferment scheme cannot be used for PPs.
- e) Clients required to declare goods electronically in terms of Rule 101A.01A(2)(a)(v) must, whether or not registered for payment of duty, use the SARS eFiling service when making payment to SARS. (GEN-PAYM-01-G01).
- f) A Customs Officer will capture the manual PP and provide the client with a copy of the CEB01 which reflects the PRN to enable payment.

2.5 Maintenance and compliance of provisional payments

2.5.1 Extension of time period

- a) A client may apply for extension of the time period within which the condition of the PP must be complied with, **before expiry of the PP**.
- b) A formal application for extension must be made on a company letterhead. The letter must be signed, dated and scanned to the PP case by the client. (SC-CF-55). The minimum information required on the application letter must contain the following:
 - i) SSM reference <insert PP case number>;
 - ii) Local/Movement reference number <insert LRN/MRN>;
 - iii) Applicant details <insert name and client code>;
 - iv) Insert reason for extension of time period and number of days required; and
 - v) Insert the declaration as below: "I <insert full names>, for and on behalf of <insert company's/client's name> in my capacity as <insert capacity> am duly authorise to sign this declaration. I hereby undertake to comply with the requirements of the Customs and Excise Act, 1964, and the rules in respect of the goods or circumstances to which this provisional payment relates within the period determined by the Commissioner."
- c) For manual PPs the letter must be submitted to the Branch Office where the original PP was lodged.
- d) On receipt of the application the circumstances as to why the time-period granted must be reviewed will be considered and each case will be treated on its own merits.
- e) The client will be notified:
 - i) For import CCD based PPs via a CUSRES message. If the application is granted, a CUSRES 48 will be send to the client including the new expiry date.
 - ii) For manual PPs via a written communication.

2.5.2 Record a registered appeal

- a) The current process of lodging an appeal against penalties and forfeiture by submitting a DA 51 must be followed.
- b) The client must scan a copy of the registered appeal, DA 51, to the PP case to be recorded on the register.
- c) The declarant will receive a CUSRES 43 confirming that the appeal application received was recorded on the PP register.
- d) Once an appeal is recorded against a PP the system will not allow liquidation of such PP unless the appeal is finalised and the appeal status removed from the system.
- e) Once the appeal process has been finalised, the client must liquidate the PP accordingly and attached the final outcome of the appeal to the PP case, if applicable.

2.5.3 Liquidation of provisional payments

- a) An application to liquidate a PP may be received by the Controller/Branch Manager:
 - i) From the client once the conditions under which the PP was lodged are complied with; or
 - ii) Where an Internal Administrative Appeal Committee made a decision to refund a part or full amount of a PP deposited by a client.
- b) Clients must ensure that where PPs are to be liquidated the following are adhered to:
 - i) All conditions of the PP have been fully dealt with and or met.
 - ii) All PPs must be liquidated in full before it becomes time expired.
 - iii) An audit may be done on the client's documents which relates to the PP concerned.
- c) Liquidation is allowed on a penalty or forfeiture under the following circumstances:
 - i) After the expiry date plus seven (7) days has been reached and the client has been notified of the intention to liquidate; or
 - ii) If an appeal on the case has been finalised.
- d) Where conditions for lodging a PP have not been complied with, duties and taxes covered by the PP must be brought to account (SC-CF-55) and the PP liquidated by the client.
- e) If the conditions of the PP require that an invalid, or incorrectly presented declaration be adjusted (see Sections 39 and 40), the amounts due, or correction needed must be adjusted or brought to account on an amended declaration.
- f) PPs covering possible duties, VAT and penalties pending the outcome of court cases or appeals may not be liquidated.
- g) The onus rest upon the client to ensure that the lodged PP is followed up and liquidated within the time-period indicated on the PP.
- h) A reminder letter of outstanding PPs will be forwarded to clients on a regular basis indicating that the listed PPs were not liquidated within the stipulated periods.
- i) PPs lodged as surety may only be liquidated to the declarant and not to SARS.
- j) If it is found that a client consistently, or without good reason(s), fails to take steps to liquidate PPs timely, steps will be taken to ensure that such clients meet with their commitments in future. (The imposition of nominal, disciplinary penalties in terms of the Act would be a consideration).
- k) The liquidation of a PP will require that the client has a financial account at the specific Customs office or a national financial account (cash account).
- l) If a PP liquidation results in a credit, no refund will be issued to the client until the client's authentication has been done. The client authentication process will create a financial account for the client upon which the refund amount of the PP may be requested. Refer to SC-CF-19 for authentication details.

2.5.4 Liquidation of manual provisional payments

- a) If the conditions of the PP require that an invalid, or incorrectly presented declaration be adjusted (see Sections 39 and 40), the amounts due, or correction needed must be adjusted or brought to account on an amended declaration, and processed by the client.
- b) After receiving an application together with the proof of documents for the pending reason e.g. literature, inspection report etc. from the client the application will be considered by the Customs Officer who may approve and liquidate the PP.

- c) If the proof provided does not comply with the PP conditions the Customs Officer will reject the application with a written reason, signature and name printed at the back of the PP to the client.
- d) Clients must submit a letter indicating the reasons for the non-compliance of the conditions for liquidating PPs within the prescribed time to the Controller/Branch Manager.
- e) If a PP is older than two (2) years such PP will not be liquidated and the money will not be refunded to the client as the payment is forfeited to SARS.

2.5.5 Liquidation of import CCD based provisional payments

- a) A client must submit an amended CCD to liquidate a PP, and scan documentary proof to the PP case. (SC-CF-55).
- b) Once the declarant has complied with the conditions of the PP, the client must apply for liquidation of the PP which is done by submitting an amended CCD removing the original PP amount.
- c) If PP conditions are not met, duties and/or VAT must be brought to account on an amended CCD including the liquidation request.
- d) For finalised appeal cases where PP amounts must be liquidated to the declarant in full or in part, the client must submit an amended CCD to liquidate the PP.
- e) The declarant will receive a CUSRES 13 message to submit supporting documents relating to the compliance of the PP condition.
- f) Once accepted, a CUSRES 27 and 45 and/or 49 message is sent to the declarant.
- g) Any credit due will be posted to the declarants Financial Account (FAN).

2.6 Keeping of records

- a) Every client must keep for record purposes for a period of five (5) years:
 - i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
 - ii) Any data related to such documents created by means of a computer.
- b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A)
- c) Every client must produce such books, accounts and documents on demand.

2.7 Penalties

- a) Failure to adhere to the provisions of the Act is considered an offence.
- b) Offences may render the client liable to, as provided for in the Act:
 - i) Monetary penalties (SC-CO-01-02);
 - ii) Criminal prosecution; and/or
 - iii) Suspension or cancellation of **their deferment account**, registration, license or accreditation **and/or designation**.

2.8 Promotion of Administrative Justice Act

- a) **Any action on behalf of the State, which may be detrimental to any person, organisation or company, must be made in a fair manner with good reason(s). All penalties are therefore carefully deliberated, uniformly implemented and reasons and / or evidence for such actions maintained.**
- b) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have

been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:

- i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
 - ii) Imposes a duty on the State to give effect to those rights;
 - iii) Promotes an efficient administration as well as good governance; and
 - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to **fair and** just administrative action.
- c) Administrative action which significantly and unfavourably affects the rights or valid expectations of any person must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
- d) A person must be given:
- i) Written reasons of the nature and purpose of the proposed administrative action;
 - ii) A reasonable opportunity to make representations;
 - iii) A clear statement of the administrative action; and
 - iv) Adequate notice of any right of review or internal appeal, where applicable.
- e) Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.
- f) Before administrative action can be taken by Customs the client must be allowed the opportunity to:
- i) Obtain assistance and, in serious or complex cases, legal representation;
 - ii) Present and dispute information and arguments; and
 - iii) Appear in person.
- g) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within **thirty (30)** days after the date on which the client became aware of the action, request Customs to furnish written reasons for the action.
- h) Customs must within **forty-five (45)** days after receiving the request, give the client adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

2.9 Appeals against decisions

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CA-02.
- b) If clients disagree with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

3 RELATED INFORMATION

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 3(1),39, 40, 47(9), 55(2)(b), 57(A)(1)-(3),(5), 60, 64, 65, 76(4)(a), 76B, 80, 81, 83, 84, 87, 88, 91, 93, 98, 99, 107 and 113 VAT Act No. 89 of 1991: Section 7(1)(b)
Other Legislation:	Bill of Exchange Act No. 34 of 1964: All Interpretation Act No. 33 of 1957: Sections 2 and 4 Payments Association of South Africa (PASA): All Promotion of Access to Information Act No. 2 of 2000: All Promotion of Administrative Justice Act No. 3 of 2000: Sections 3 and 5 Public Finance Management (PFMA) Act No. 1 of 1999: Sections 7, 12, 21, 29, 40(1a),45, 76(2)(h), 51 and 55 Treasury Regulations issued in terms of PFMA Act No. 1 of 1999: Part 5 paragraphs 11.3 and 15.4; Part 6 paragraphs 15.9 and 15.12; Part 7 paragraphs 17.2 and 18
International Instruments:	International Financial Reporting Standards (IFRS): All Revised Kyoto Convention General Annex: Chapter 3 Standards 3.8, 3.12, 3.41 and 3.43; Chapter 4 Standard 4.23; Chapter 5 Standard 5.1 -5.3, 5.6 and 5.7; Specific Annex B Chapter 3 Standard 1 and Specific Annex J Chapter 1 Recommended Practise 15 WCO SAFE Framework of Standards: None Generally Accepted Accounting Practice (GAAP): All Generally Recognised Accounting Practice (GRAP): All

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
GEN-PAYM-01-G01	Payment Rules – External Guide
SC-CA-02	Internal Administrative Appeal – External Policy
SC-CC-26	Alternative Dispute Resolution – External Policy
SC-CF-04	Completion of Declarations – External Manual
SC-CF-19	Licensing Registration and Designation – External Policy
SC-CF-25-A01	Completion of DA 70 – External Annex
SC-CF-55	Clearance Declarations – External Policy
SC-CO-01-02	Offences and Penalties – External Policy
SC-DT-C-13	Refunds and Drawbacks - External Policy
SC-SE-05	Bonds - External Policy
SC-TA-01-04	ATA Carnet – External Policy
SC-TA-01-06	CPD Carnet – External Policy
SE-PP-02	Excise Provisional Payments – External Policy

3.3 Quality Records

Number	Title
CEB01	Customs/Excise Billing
DA 70	Application to Make Provisional Payment
SAD 500	Customs Declaration Form
SAD 501	Customs Declaration Form (Continuation Sheet)
SAD 502	Customs Declaration Form (Transit Control)
SAD 503	Customs Declaration Form (Bill of entry Query Notification/Voucher of Correction)
SAD 504	SAD: Voucher of Correction (direct)

4 DEFINITIONS AND ACRONYMS

Act	Customs and Excise Act No. 91 of 1964
CCD	Customs clearance declaration
Conditional release	It is the release of goods with the payment of a PP amount, pending the fulfilment of certain conditions by the client within a specific time period e.g. supplies supporting documents, embargo release or the release of goods detained or stopped
Conditional release	The release of goods with the payment of a PP amount, pending the fulfilment of certain conditions by the client within a specific time period e.g. supplies supporting documents, embargo release or the release of goods detained or stopped
CUSRES 13	To notify the declarant that the declaration has been automatically selected by the Customs risk engine and standard clearance supporting documents must be submitted
CUSRES 27	To notify the declarant that an amendment declaration (VOC) has been processed and accepted on the Customs system. [This is not a release message]. (If goods are still under Customs control, a Release status "1" will be automatically sent to the declarant and Release Authority.)
CUSRES 43	To notify a declarant that an appeal application has been recorded on a PP case. This will pre-vent a Provisional Payment from being liquidated while an appeal is not finalised
CUSRES 45	To notify a declarant that a penalty and/or forfeiture PP has been liquidated to SARS. This can be as result of an outcome of an appeal case or as result of expiry of a PP where a penalty has been imposed and no appeal case is active
CUSRES 47	To notify a declarant that an application for extension of expiry date, or application for release under embargo have been rejected, or that the recording of an appeal was rejected
CUSRES 48	To notify a declarant that a PP has expired, conditions of a PP to be complied with, or duties and taxes to be brought to account
CUSRES 49	To notify a declarant that the application to liquidate a PP was successful and the amount has been liquidated to the declarant
DCC	Duty Credit Certificate
Embargo release	The process whereby the client gets permission to have the goods inspected at their premises instead of the port or depot
EUR	European Certificate (Movement Certificate)
FOR	Forfeiture
MRN	Movement reference number
On Consignment Goods	Under this trading practice, the goods are dispatched to South Africa not as a result of a sale, but with the intention that they would be sold for the account of the supplier, at the best price obtainable. At the time of importation no sale has taken place.
PEN	Penalty
PP	Provisional Payment (DA 70)
PPA	Provisional anti-dumping
PPC	Provisional countervailing
PPE	Provisional payment for embargo release
PPG	Provisional safeguarding
PPR	Provisional payment for conditional release
PPT	Provisional payment for temporary imports
Temporary import	A type of import where the importer's intention is to later re-export the goods. Duties are not paid at time of importation, but a PP is required to be lodged to cover the duties until re-export is proven when the PP is liquidated and refunded to the client.
Unregistered Client	Customs clients that trade with SARS but do not have a registered client number as prescribed in Rule 59A.03(1)(a), excluding foreigners
VAT	Value-Added Tax
VDN	Value Determination Number

5 DOCUMENT MANAGEMENT

Policy Owner	Director: Customs: Border Operations, Ports of Entry & Customs Compliance
Detail of change from previous revision	a) SC-CF-32 Q-code changed to SC-CF-25-A01 – Completion of DA 70. b) Amended PAJA paragraph dates to align with Rule 77H.02. c) SC-CC-24 Q-code changed to SC-CA-02 – Internal Administrative Appeal. d) Inserted quality records. e) Updated Policy Owner details.
Template number and revision	GC-TM-03 - Rev 9