

SARS DISCUSSION DOCUMENT ON THE REWRITE OF THE EXCISE LEGISLATION

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CHAPTER I – INTRODUCTION

The Customs and Excise Act, No. 91 of 1964, (the 1964 Act) provides for the levying of customs and excise duties, and also certain other taxes such as fuel levies, Road Accident Fund levies, environmental levies, health promotion levies and air passenger tax. To enable the administration and collection of these taxes, the legislation prescribes an extensive system of controls focussed on the import, export, manufacture and use of goods. These control mechanisms also serve a secondary purpose to enforce legislative restrictions on the import, export, manufacture and use of certain specific regulated goods and to combat the smuggling of counterfeit and other illicit goods into and out of the Republic. The 1964 Act currently provides for customs and excise legislation in one instrument.

The 1964 Act was written in an era when the focus was on control and, although the legislation was extensively amended over the years to keep pace with new approaches and to modernise the system, the basic structure of the Act remained unchanged and still contains a strong undercurrent of rigidity reminiscent of the era in which it was written. As such, the 1964 Act is no longer structurally suitable to serve as a vehicle for implementing a modern system of customs and excise control in accordance with current international trends and best practice.

The Minister of Finance announced in Budget 2000 the rewrite of the customs and excise legislation as follows –

Before 1964, customs and excise were governed by separate Acts. When the Customs and Excise Act of 1964 was initially drafted, it overemphasised the then government policy of import administration, with practically no provisions on exports. Since South Africa's readmission to the international arena, the focus of customs has moved to some extent from revenue collection to trade facilitation and control.

A rewrite of the Customs and Excise Act will commence this year, taking into account regional economic integration, the Kyoto Convention, the distinct differences between customs, excise, antidumping, countervailing and safeguard duties; and other trends linked to globalisation of trade.¹

The need for an effective customs and excise control system as a mechanism for revenue collection, protection of society and combating of crime has become increasingly important to cope with the demands of growing global trade and trafficking. Hence, the international trend is to modernise customs and excise systems in order to meet these contemporary challenges, while minimising the disruptive effect of such administrative interventions on legitimate trade as far as possible. This has to a large extent been achieved through the amendment of international treaties and conventions to provide a model for simple, predictable and efficient control systems by optimising those technologies that enhance the traditional objectives of customs and excise control and promote trade and tourism between countries.

South Africa is a signatory to most of the international instruments that impact on customs and excise control and has therefore had to amend its current legislation to be compliant with such international prescriptions. In 2004, South Africa acceded to the General Annex of the Revised Kyoto Convention that provides a model framework for customs control and is regarded as the blueprint for a modern, efficient and cost-effective customs system. This has required a fundamental restructuring of domestic customs and excise legislation to give effect to the prescriptions of the

¹ National Treasury. 2000. *Budget Review 2000 – Revenue issues and tax proposals*. pp. 73 to 74.

Convention and other binding international instruments, while establishing a sound, clear and logical legislative framework for the many other government instruments that rely on customs control.

When the redrafting of the new legislative framework commenced, it was resolved that the new legal structure should consist of the following three separate pieces of legislation that would eventually replace the 1964 Act –

- Customs Control Act that provides a customs control system for all goods imported into or exported from the Republic through all means of transportation and delivery and by all persons entering or leaving the Republic.
- Customs Duty Act that provides for the imposition, assessment and collection of customs duties on goods imported into the Republic and also for duties on exported goods where needed.
- Excise Duty Act that provides for the imposition, assessment and collection of excise duties, fuel levies, Road Accident Fund levies, environmental levies and health promotion levies on goods imported into or manufactured in the Republic and also for the imposition and collection of air passenger tax.

The division of the 1964 Act and the rewrite of the customs and excise legislation is an enormous undertaking. It was therefore decided from the outset to separate the customs and the excise components and to complete the project in two phases. The first phase was the drafting of the two Customs Bills and the second will be the drafting of the Excise Bill. The Customs Bills were enacted into law in 2014 as the Customs Duty Act, No.30 of 2014, and the Customs Control Act, No.31 of 2014. Upon implementation of the new customs legislation, the current 1964 Act will be retained in an amended form for the continued administration of excise duties and the other related levies until the proposed new Excise Duty Act comes into effect. The two Customs Acts would replace the customs provisions of the 1964 Act and the amended 1964 Act would for the time being continue to apply to excise duties and these other levies. The Customs and Excise Amendment Act, No.32 of 2014, which was enacted together with the new customs legislation, will achieve this separation when the new customs legislation takes effect.

The drafting of the proposed new Excise Duty Act has not commenced as of yet. It should be kept in mind that there are no internationally harmonised policies and procedures specifically for excise. The urgency to rewrite the customs legislation according to the international practice prescribed in binding international instruments has therefore not been a consideration for the rewrite of the excise component of the legislative framework. Nonetheless, the broad objectives with the creation of the new standalone customs legislation apply equally to the envisaged rewrite of the excise duty legislation, which will aim to –

- Deliver government's stated excise policy and revenue objectives.
- Provide the capability required for SARS to cultivate a world-class excise administration.
- Keep pace with global international best excise practice, trends and technological advances.
- Ensure that excise policies and procedures are effective, efficient, predictable and transparent.
- Limit any unintended detrimental impact on the legitimate trade in excisable goods.
- Use plain language and logical legal structure aligned to the new customs legislation.
- Meet the requirements and precepts of the Constitution.

This discussion document outlines the key aspects of an excise administration system that form the internationally recognised foundation against which any excise review must be measured. The introduction and current practice of the duty-at-source system of excise administration is provided as background context to the review of the present excise legislation. Certain apparent shortcomings in the current duty-at-source licencing, accounting, assessment and acquittal of excise duties that

require reform are identified for possible amendment. A selected country comparison is provided to demonstrate international examples of reform options. Finally, a summary conclusion of all these discussions encapsulates the proposals and recommendations that SARS intends to pursue as the process to rewrite the excise legislation continues.

CHAPTER II – KEY ASPECTS OF AN EXCISE ADMINISTRATION SYSTEM²

1. Defining excise taxation

Excise duties are indirect taxes applied to a narrow base of goods and sometimes services. The Organisation for Economic Cooperation and Development (OECD) classifies excise taxes as duties that are levied on particular products or a limited range of products, imposed at any stage of production or distribution, and are usually assessed by reference to the weight, strength or quantity of the product, but sometimes by reference to the value.³

Excise duties differ from sales taxes that are imposed at retail level and value-added taxes (VAT) that are applied at each stage of the supply chain, as well as on generally broader tax bases. Excise taxes are not usually levied instead of such taxes, but are imposed in addition or complementary to such taxes. Internationally, excise taxes are called by various consumption tax names that reflect their very specific and narrow tax base, such as “fuel taxes” or “tobacco taxes”.

2. Objectives of excise taxes

Governments globally rely on excise taxation as a reliable stream of sustainable tax revenue. Long term consumer demand for excisable goods such as tobacco, alcohol and fuel tends to respond relatively in-elastically to price increases in the short to medium term and therefore provides steady excise income for the fiscus. However, this fiscal revenue objective is generally balanced against the broader socio-economic policies of government that rely on excise taxation to influence the prevalence of certain goods in the domestic economy.

Excise tax-induced price increases influence marginal consumption of excisable goods and are therefore increasingly used internationally to manage the overall domestic consumption of harmful goods for health and environmental purposes. In addition, excise taxation based on the value of certain perceived luxury or non-essential goods are also often used as a complementary measure to value-added or sales taxes to achieve the progressive taxation of luxury consumption by affluent consumers for purposes of income redistribution.

3. Excise taxes compared to customs duties

Excise taxes differ from customs duties in that they are typically imposed on both domestically manufactured goods and similar imported goods, whereas customs duties only apply to imported products. Imported goods that are subject to excise taxation are often referred to as “like goods” in that they are the equivalent of those domestically manufactured goods that are subject to excise. Under the OECD classification of taxes, excise duties on imports are therefore considered excise taxes and not customs duties.

Excise duties on imports are generally collected by the local customs agency at the time the relevant goods are declared for importation, along with any customs duties, sales taxes and VAT that may be payable. This has historically been the standard international practice due to the considerable

² Preece, Rob. 2008. *Key Controls in the Administration of Excise Duties*. World Customs Journal, Volume 2, Number 1. April 2008.

³ OECD. 2004. *Classification of Taxes and Interpretative Guide*. Paragraph 61, classification sub-heading 5121.

overlap of customs administration with the application of domestic consumption taxes on imported goods.

More recently, some excise administrations internationally have been separating from customs administrations similarly to other consumption taxes like sales tax and VAT. Such a separation of excise and customs administrations is motivated by the risk that their differing objectives may lead to divergent priorities. Customs agencies tend to focus on border security and trade facilitation. By contrast, revenue agencies focus on the collection of tax revenue like excise, maintaining the holistic integrity of the tax system, and meeting the broader taxations aims of government.

As the cross-border trade focus of customs administration may therefore sometimes be at odds with the domestic consumption tax objectives of excise taxation, care should be taken in the level of excise delegation to customs agencies.

4. Excise taxation of locally produced versus imported goods

Importantly, excise duties on imported “like goods” should through its relevant tax legislation and appropriate collection agency mirror those excise taxes on equivalent domestically manufactured goods. Article III of the General Agreement on Tariffs and Trade (GATT) requires that the same treatment be afforded to locally produced goods as imported products “so as not to afford any protection to domestic production”.⁴

Domestically manufactured excisable goods and like imported goods should therefore be treated equally and consistently in terms of excise duty rates and concessions to excise duty rates, as well as administrative and compliance requirements such as reporting, registration, licensing, duty payment arrangements, etc. Assuming the required parity between the excise treatment of locally produced and imported like goods, the excise administration thereof should be identical even if the collection of excise duties on imports relies on the support of the customs agency.

5. Components of an effective excise administration system

Excise systems differ globally according to the list of taxable commodities and services, the basis of taxation, excise tax rates, and the point of taxation. However, the administration of all excise systems is universal in the objective to determine tax liability and to bring payment thereof to account by the due date.

The taxing point is that point at which the excise legislation provides for the excise liability to be recognised and brought to account for payment. Although the excise duty may be deferred or settled periodically, the passing of the taxing point will always confirm the applicable excise duty rate, accounting period, due date for reporting and due date for payment. If excise is viewed as a production tax, the taxing point will be closer to the place of manufacture or importation. Alternatively, if excise is viewed as a consumption tax, the taxing point would be closer to the entry into the retail market.

For this purpose, excise taxation systems typically consist of three operational areas, i.e. the creation of excise liability, the offsetting of excise liability on hand, and acquittal of the final excise liability.

⁴ GATT, Article III ‘National Treatment on Internal Taxation and Regulation’, paragraphs 1, 2 and 4.

5.1 Excise liability creation

Entities within the excise system create an excise liability through the domestic manufacture of excisable goods or the importation of “like goods”; the transfer of an excise liability upon receipt of excisable goods from other bonded entities; credits or refunds for excisable goods returned into bonded status from the market place; and gains in product volume during the manufacture or storage of excisable goods.

5.2 Excise liability on hand

The entity holding an excise liability should offset that portion of the excise liability attributable to stock on hand or expected losses of such stock in the near future.

5.3 Excise liability acquittal

Acquittal of the final excise liability occurs when the excisable good or service passes through the relevant taxing point and the appropriate excise duties are remitted.

Refunds / rebates / drawbacks

Local excise laws and administrative arrangements may also allow for excise liabilities to be acquitted through refunds, rebates or drawbacks. The basic principle underlying these acquittals is that excise duties should not be payable if the good or service is not to be consumed in the domestic market. As these products will not be delivered into the domestic market, the excise liability that had attached to the goods upon production or importation therefore has to be acquitted:

- The nature of some excisable goods gives rise to losses during manufacturing, storage or distribution and the excise liability on these lost products therefore needs to be acquitted.
- Sales or transfers of excisable goods that meet certain end-use criteria may also need their excise liability acquitted, e.g. goods that form inputs into further manufacturing processes or are applied for meritorious purposes.
- Sales of excisable goods and services for export to offshore markets need to have their excise liability acquitted upon confirmation of their export status.

Transfers of excise liability

Sales of excisable goods may occur to other entities that also deal in excisable goods and have the necessary licensing and approvals to receive excisable products from manufacturers or importers. In some of these instances, the excise liability may be transferred to the other entity rather than being acquitted from the excise system altogether:

- Regional suppliers shifting excisable goods down the supply chain.
- Other manufacturers who will add value or undertake further processing.
- Duty free shops for passengers or foreign tourists.
- Sales to supply stores of ship and aircraft undertaking international voyages.

6. Excise operational and enforcement controls

Various layers of excise administration are involved during the lifecycle of excisable goods, as the levels of control required differ widely for the activities of manufacture, import, storage, sales and

deliveries. The necessary operational and enforcement interventions concerned vary according to the stages of excise liability creation, taxing point and full acquittal of liability.

6.1 Licensing or registration requirements

The primary control in an effective excise administration system is to apply a licensing or registration regime as a pre-requisite for all entities to authorise their dealing with excisable goods. Secondary licensing or registration of specific activities related to specified goods may also be required. All activities of manufacture, importation, bonded receipts, gains in product, storage, sales and delivery can be regarded as dealing in excisable goods. Hence, many authorities retain the right to enforce payment of excise duties along the entire supply chain of excisable goods. Being in possession of non-duty paid excise goods without the necessary licensing or registration would under these circumstances be considered a criminal offence against the relevant legislation.

Criteria for licensing or registration

Licensing or registration allows the administering agency full knowledge of who is operating within the excise system and will be creating excise liabilities. The control operates from the administrative agency having full knowledge as to where excisable operations are taking place for the purposes of monitoring and tracking any liabilities that are created.

The effectiveness of the control hinges on the review process whereby the adequacy of the applicant, as a licensed entity within the excise system, is assessed. The review process allows the administering agency to reject applicants that may pose an unacceptable risk of non-compliance and loss of revenue. Alternatively, the agency can ensure appropriate modifications are undertaken to any part of the applicant's operations to safeguard the integrity of the excise administration system.

Typically, the onus is placed on applicants to demonstrate that they are a *bona fide* business with the resources and skills needed for dealing responsibly in excisable goods. Furthermore, it could be required that both the business and key personnel have sound compliance records in taxation matters. Subsidiary controls could further restrict the operation of a license or registration to a specific activity, certain location or sole commodity. Finally, a range of conditions can be applied to the license or registration itself:

- The creation and maintenance of business records to a standard set by the administering agency and capable of demonstrating compliance.
- Full and free access to those records, the licensed premises, the production machinery, relevant apparatus such as meters and gauges, and to any raw materials, partly manufactured and finished goods on the premises.
- Notification of changes to relevant operational matters, such as replacement of key personnel, financial systems, measuring equipment or any other material change.
- The lodgement of documentary or cash security in proportion to the size of potential excise liabilities, to be held in the event of excise revenue loss from the licensed entity.

6.2 Recording, accounting and reporting obligations

Recording, accounting and reporting controls determine the information that licensees or registrants will capture and reflect for purposes of reporting to the administering agency. These controls are used for tracking excise liabilities and monitoring the risks to those excise liabilities as they move from creation to acquittal. Record-keeping should therefore track

excisable goods from manufacture or importation through subsequent movements in and out of licensed warehouses until all excise duties have been fully acquitted. The process of reporting operational details has become simpler for both industry and revenue agencies with the use of electronic returns based upon the licensee's or registrant's usual commercial records.

The main areas of activity that the administering agency needs to monitor relate to the three key components of an excise system, i.e. excise liability creation, excise liabilities on hand, and the acquittal of excise liabilities. Excise accounts should therefore start with an opening balance for an accounting period. Excise liability created or received during the accounting period is added (e.g. manufacture, imports, gains, transfers or adjustments). Excise liability removed or reduced during the accounting period is deducted (e.g. duty paid deliveries, exports, losses and destructions of stock). This leaves a closing balance of the net excise liability for the accounting period that can, if desired, be verified through a physical stock take.

Reporting on excise liability creation

The excise liability creation originating from imports of finished excisable goods or receipts of finished excisable goods from other licensees can fairly easily be reported by reference to the relevant transactions of the local Customs agency or the records of the business that despatched the goods. Reporting on the excise liability created through the domestic manufacture of excisable goods is more complex and requires intricate reconciliation.

The objective with monitoring domestic manufacture of excisable goods is to reconcile raw material inputs to the final production of excisable goods. The purpose of such records is to find a ratio between raw inputs per manufacturing process and the resultant output of finished product. Deviations from that expected range would see the licensee called to account to remove the risk of undeclared production. This can be complicated by the following factors:

- The nature of the raw material may not facilitate measurement, e.g. the volume of sugar in fruit being fermented.
- Wastage of raw materials as part of the production process.
- Losses of raw materials, partly manufactured or fully manufactured products as part of the production process, e.g. liquids left in pipes or tanks.
- The efficiency of the production process that may limit the extent of raw material recovery.
- Sampling processes for quality control and the testing of filling or strength may require finished goods to be consumed as part of the overall manufacturing process.

6.3 Excise payments and acquittal of liabilities

Certain deliveries past the taxing point may not give rise to an excise payment, e.g. exports, foreign-going ship's stores, diplomatic sales, or sales to government. Reporting of such deliveries over the accounting period is still required, though, to allow for monitoring by the excise administering agency.

The excise liability on dutiable deliveries is acquitted by either the goods passing the taxing point and being brought to account with appropriate payment of excise duties, or the liability being in some way written off through losses, deterioration or destruction of goods while still within the licensed premises. Alternatively, the liability of the licensee can be acquitted by the effective transfer of that liability to another licensed entity through the controlled transfer of the goods. However, from an excise system perspective such liability is

not yet acquitted and the transfer poses a renewed risk in itself for tracking the liability. Permission therefore needs to be granted for the transfer of the excise liability, holding the sender accountable until the goods arrive at their nominated destination and the receiver accepts the liability.

The principal liability acquittal mechanism will be the goods passing the taxing point and triggering the requirement for the excise liability to be brought to account and remitted. The method and timing thereof depends on local excise law, but increasingly this process is self-assessed and reporting and payment occur periodically. However, pre-payment of excise duties may be required for some high-risk commodities before delivery past the taxing point. Tax stamps are often used as proof of such pre-payment, especially for goods with higher values or higher tax rates that are particularly vulnerable to tax evasion (e.g. tobacco and alcohol).

Adjustments to periodic excise returns

It is the nature of excise duties and excisable goods that adjustments will sometimes need to be made to the excise liability on periodic tax returns for issues such as:

- Incorrect deliveries that cause incorrect stock volumes or quantities.
- Returns of stock due to product deficiencies or customer returns.
- Incorrect classification of deliveries, e.g. domestic sale being classified as an export.
- End use requirements not being fulfilled, e.g. end user not taking delivery.
- Failures in recording and measuring systems, e.g. pipes, flow-meters, gauges or scales.
- Incorrect reporting of delivery date giving rise to payment in wrong accounting period.
- Goods that deteriorate, perish, break or otherwise become unsaleable.

As a general requirement, the licensee would be expected to follow an application process to defend the circumstances or situations that gave rise to the need for an adjustment and various eligibility criteria must be met for any refunds, credits or write-offs. Adjustments may be catered for in current or future accounting periods as part of the normal excise tax return. Alternatively, a separate return could be required to apply for a refund from or report an increased liability to the administering agency. The refund or increased liability may be dealt with as a separate payment or be offset against a future excise account of the licensee.

7. Conclusions

The risks of administering a successful excise system depend on the key controls of licensing / registration, recording and reporting. It is important to identify all liabilities entering the excise system through the legal requirement to license or register all excisable dealings. In this way the administering agency has knowledge of and about all those entities that will be creating excise liabilities. With the appropriate recording and reporting of all excisable dealings, the administering agency is provided with the ability to track excise liabilities from creation to acquittal, monitoring and identifying potential revenue risks from any aspect of the excise system.

CHAPTER III – THE CURRENT DUTY-AT-SOURCE EXCISE REGIME

1. Introduction of DAS

Duty-at-source (DAS) is a system of assessing excise duty and accounting for excisable products at source, i.e. as close as possible to the point of domestic manufacture when goods achieve their excisable character or the point of importation of similar excisable products.

South Africa currently applies a DAS excise administration system for most excisable goods. The present DAS system is based on removals from licensed manufacturing warehouses and replaced in 2002/03 the earlier administration that was based on subsequent sales from storage warehouses. DAS is applied to all locally manufactured excise products, but imported equivalent products are not subject to DAS and are only taxed upon entry into the domestic market for home consumption.

2. Reasons for implementing DAS

At the time of the introduction of DAS, it was estimated that the fiscus was suffering significant losses in excise duties and VAT annually under the previous sales based excise administration system. These losses were attributable to under-declaration of product sales, negligent losses of product and fraudulent activities.

The administrative burden for SARS under the sales based system of controlling the multitude of bonded warehouses and monitoring the movement of goods between these warehouses proved problematic. The potential for leakage of excise revenue was increased through the inappropriate movement of goods in bond and the incorrect use of loss allowances and rebates in the movement of goods between these storage warehouses.

The advent of DAS meant that SARS no longer had to monitor the movement of goods between storage warehouses and could redeploy staff to focus on control activities that would increase voluntary compliance and improve revenue collection. The upfront assessment of dutiable volumes and shift away from warehouse administration to excise enforcement at manufacturing source level reduced opportunities for fraud by improving SARS' knowledge of the expected duty payments from each client and offered opportunities to improve administrative controls.

Bringing forward the point of assessment and payment of duty under DAS therefore resulted in systemic benefits, including reduced administration, improved compliance, lower revenue risk, ease of enforcement and the facilitation of legitimate trade.

3. Elements of conversion to DAS

The core principle of the implementation of DAS was the shifting of the point at which excise duty is assessed and becomes payable. The point at which dutiable volumes are determined is the earliest possible point in the supply chain that is administratively feasible. This is not necessarily the point at which dutiable products have gained their full excisable character (for example, maturation of wine and spirits may take years after the excisable point).

Duties and levies are typically assessed immediately after manufacture. The liability to account for excise duties and the payment thereof therefore rest with the prime manufacturer. The duty rate

prevailing at the time of manufacture is applied and duties become payable at the close of an agreed payment period after the accounting month end.

Bonded storage warehousing of local manufacturers was therefore reviewed and approximately 455 storage warehouses were deregistered or de-licensed. All stock on hand at the changeover was assessed at prevailing rates of duty. All sales invoiced and not yet delivered were similarly assessed. Assessed warehoused goods were subject to the same payment periods as newly manufactured goods for purposes of the changeover.

SARS' enforcement focus was shifted from on-site supervision and monitoring to proactive control through spot checks of client controls and records. Integrated audits were developed to address all risk points throughout the value chain. The enforcement function provides critical input into the audit process that operates on a risk profiling basis.

A fundamental decision was taken at the time of the conversion to DAS that the changeover should as far as possible be revenue neutral for SARS and cash neutral for affected industries compared to the previous sales based excise regime. This was done to minimise the potential impact of the conversion to DAS on the fiscus and economy. The neutral changeover also fostered cooperation between SARS and industry at the time and facilitated the smooth transition to DAS.

4. Point of duty liability under DAS

The duty liability under DAS is deemed to arise at a point as close as possible to the source of domestic manufacture of excisable goods. In practice, the deeming point for each excise product is at the most administratively feasible point for that specific industry. Despite these specific deeming points per industry, a general duty liability remains with all participants throughout the supply chain of excisable goods. All role players are liable for inappropriate loss of excise products under their control and in all situations the excisable goods are the security against this continued excise duty liability throughout the supply chain.

The manufacturing sites for most excisable goods typically consist of the production facility, a manufacturing storage facility and a dispatch storage facility. This entire manufacturing site is deemed a manufacturing warehouse (VM), which is subject to a manufacturing licence when the producer is liable for excise duties or to registration if the producer falls below the licensing requirements. Duties are assessed on the volumes of product that leave the dispatch warehouse and the duty payment responsibility rests with the producer. Licenced storage warehouses under the previous sales based system therefore had to de-license, as all storage depots beyond the manufacturing site receive goods duty-paid under DAS.

These DAS principles of the point at which the duty liability arises apply to most dutiable industries, such as tobacco excise products, beer excise beverages, environmental levy goods, health promotion levy goods and *ad valorem* excise goods. Slight variations to these principles occur in the oil, spirits and wine industries:

4.1 Oil industry

The manufacturing sites of oil companies require separate manufacturing licenses for each of the refineries or their share therein. The deeming point where excise duties are assessed is upon volumes of product leaving the refinery gate of the manufacturing warehouse. The duty payment responsibility rests with the oil companies that own and operate the

refineries, including the separate responsibilities assumed by each of the participants of joint venture refineries. Licenced storage warehouses under the previous sales based system had to de-license, but storage facilities on the refinery premises were regarded as part of the manufacturing warehouse and have been subject to the same manufacturing licence.

4.2 Spirits industry

The manufacturing sites for spirits are divided into primary and secondary manufacturing warehouses that require separate licensing. Primary spirits manufacturing warehouses (VMP) are authorised to distil, mature, macerate, re-distil and mix product. Secondary spirits manufacturing warehouses (VMS) receive such inputs from primary spirits manufacturing warehouses and are authorised to break down and blend product. Industrial spirits are assessed on volumes produced by the primary manufacturer and the duty payment responsibility rests with the primary manufacturer. Potable spirits are assessed on volumes received by the secondary manufacturer from primary manufacturers and the duty responsibility rests with the secondary manufacturer.

4.3 Wine industry

The manufacture of wine products ranges from grape pressing and fermentation through stabilisation, filtering, blending and fortification up to bottling. Wine manufacturing sites span this entire process with duty assessed on bottled volumes that leave the bottling plant and the duty payment responsibility rests with the wine producer (even if bottling is sub-contracted). Wine manufacturing warehouses (SVM) extend beyond the pure manufacturing source of the excise liability and therefore require a special manufacturing license. Licenced storage warehouses under the previous sales based system had to de-license and receive goods duty-paid under DAS.

5. DAS assessment and payments

The smooth changeover to deeming excise duty assessment and collection at source was achieved by extending the payment terms specific to each industry for a neutral cash flow outcome. Payment terms were designed to incorporate industry operating cycles in order that dutiable industries would not be disadvantaged.

5.1 Imported goods

Excise duties on imported excisable goods are not included under the current DAS system. Importers may clear such goods immediately on importation for entry into the domestic market with payment of duties within the standard 7 days or 28 days for containerised cargo. Certain importers may also be granted a further 30 days payment period if a deferral account for the importer has been approved by SARS. Alternatively, imported excisable goods may be stored in a licensed storage warehouse (OS) for up to two years to postpone the payment of duties. Excise duties on such stored goods become payable upon the release of these goods from the storage warehouse for entry into the domestic market.

5.2 Domestically manufactured goods

Excise duties on domestically manufactured excisable goods are assessed at source on point of manufacture. Local production occurs in licensed manufacturing warehouses and

producers become liable for excise duties when the goods are released from the manufacturing warehouse for entry into the domestic market. Goods may not be stored in the licensed manufacturing warehouse to postpone duty payments, as the license is valid for manufacturing only and not storage. However, wine or spirits in the process of maturation or maceration may be stored for periods approved by the Commissioner. Excise duties become payable on such stored goods upon their release for entry into the domestic market.

Duties are due on domestically manufactured excisable goods according to the following specified payment periods negotiated with each excisable industry at the time of implementation of DAS. In general, payment periods were extended by an average additional 30 days to compensate for perceived stock turn-around time, although accounts must be settled in full at the end of March for the close of the fiscal year. The extended and sometimes staggered payment periods were created to provide an even cash flow for industry, but it increased the administrative burden for SARS.

- Tobacco products are assessed at licensed manufacturing warehouse level where duties are due within 60 days after the end of the accounting month.
- Beer is assessed at licensed manufacturing warehouse level where at least 50 per cent of duties are due within 30 days and the balance within 60 days after the end of the accounting month.
- Distilled spirits are assessed at licensed primary manufacturing warehouse level where duties on unblended spirits are due within 30 days after the end of the accounting month. By contrast, duties on all industrial spirits are due within 60 days after the end of the accounting month.
- Blended spirits are assessed at licensed secondary manufacturing warehouse level where duties on blended un-matured spirits are due within 110 days and on blended matured spirits are due within 130 days after the end of the accounting month.
- Fuel products are assessed at licensed manufacturing warehouse level where at least 50 per cent of duties are due within 30 days and the balance within 60 days after the end of the accounting month.
- Plastic bags, filament lamps, non-renewable electricity, CO² vehicle emissions and tyres that are liable to environmental levies are assessed at licensed manufacturing warehouse level. Duties are generally due within 30 days after the end of the accounting period, but within 25 days for CO² vehicle emissions and tyres. The accounting period is generally 3 months, but a month in the case of electricity.
- Sugary beverages that are liable to health promotion levies are assessed at licensed manufacturing warehouse level. Duties are due within 30 days after the end of the monthly accounting period.
- *Ad valorem* excise goods are assessed at licensed manufacturing warehouse level where duties are due within 25 days after the end of the 3 months accounting period.

By exception, SARS assesses excise duties on the following excisable products based on the time of sale into the domestic market and collects the duties payable according to the specified payment periods:

- Wine and other fermented products are assessed at licensed special manufacturing warehouse level where duties are due within 30 days after the end of the January to June accounting months and within 45 days after the end of the July to December accounting months. Duties on wine and other fermented products at licensed storage warehouse level are due on the same payment terms.

5.3 Goods for export

Domestic manufacturers must declare all production of excisable goods in their excise accounts, including goods to be exported. Exports are legally duty bound, but no duty payment is required as the payment terms include a fair time period for exports to be acquitted. Road hauliers must be used and bonds are required for movements to export points. Destination warehouses must be stipulated for BLNS movements and in-bond transfers are allowed to such BLNS destinations.

Exports are acquitted depending on documentary proof provided to SARS. Upon acquittal, the value of excise duty on such exported goods is offset against that month's excise duty payment. If no acquittal evidence is available, the excise duties are collected from the manufacturer. Oil manufacturers offset exports from their monthly duty payment, provided acquittal can be proven at the same time. All other exports are rebated, provided acquittal can be proven within 30 days.

In certain instances, exporters are allowed to license export warehouses as special storage warehouses (SOS) due to lengthy export stock holding periods. Licenses for special storage warehouses are considered for third party exporters, duty-free shops, ship/aircraft chandlers and special economic zones. Excise duties on goods purchased by licensees of special storage warehouses are rebated or refunded and such licensees may move goods for export in bond to export points. Duties on excisable goods at licensed special storage warehouse level are due within 30 days after the end of the accounting month.

6. DAS deductions and allowances

At the time of implementation of DAS, permitted deductions for losses of excisable products included *vis major*, manufacturing and percentage loss allowances in terms of the rebate provisions of Schedule 6 to the 1964 Act. An analysis was conducted by SARS to compare actual loss values within excisable industries to these permitted loss allowances and the initial findings confirmed the appropriateness of these allowances. Representations were accepted from industry on actual industry losses to verify these initial findings.

6.1 General deductions

The general rebate provisions available to all excisable industries under DAS are as follows:

- Manufacturing losses of excise product lost in the manufacturing process or through working, pumping, handling and similar or natural causes may be rebated to such extent as the Commissioner deems reasonable, subject to proof that such goods did not enter into consumption. In considering the reasonableness of the loss, the level of manufacturing losses ordinarily incurred by the licensee in manufacturing, packaging and removals between manufacturing warehouses and industry norms in this regard are considered.
- *Vis major* losses that occur on a single occasion in a licensed warehouse or in transit in bond between licensed warehouses through product being lost, destroyed or damaged in exceptional circumstances that are not due to any negligence or fraud on the part of the licensee may be rebated, provided the goods did not enter into consumption and

the excise duty will not be reimbursed to the owner of the goods by a third party (e.g. insurer).

- Bonded products removed for reprocessing or destruction may be rebated in instances where a specific consignment has lost all commercial value or the sale thereof would be harmful to the industry. Where the consignment still has commercial value and the sale thereof will not be harmful to industry, SARS may insist on the licensee abandoning the consignment for subsequent sale or application by SARS to recover the duties and levies.
- Excisable goods used in the manufacture of other excisable products may be fully rebated when the goods are transferred to the applicable tariff item of the excise account for the newly manufactured product and that product becomes dutiable instead. Mineral ethanol and ethyl alcohol must be denatured in manufacturing or special storage warehouses before supply to non-liquor industries.
- Exports to destinations outside SACU receive full rebate of duty if the prescribed proof of export, such as original clearance declaration, endorsed copy of processed export clearance declaration, original signed bill of lading, airway bill, rail note or road manifest, is obtained and submitted by the licensee within 30 days. Failing which, the licensee becomes liable for the excise duties on such exported goods.
- Duty paid returns from the local market may be rebated under certain circumstances. Product fit for human consumption will only be allowed back into a manufacturing warehouse in cases of a faulty order, faulty delivery, non-delivery of the consignment or surplus from consignments supplied at mass-attendance events. Product not fit for human consumption will only be allowed back into a manufacturing warehouse if it is off-specification, has become contaminated or has undergone post-manufacturing deterioration. Such returns must be accounted for as bonded stock and the duty originally paid set off on the excise account. Product not fit for human consumption may subsequently be removed from bonded stock for destruction.

6.2 Industry-specific allowances

Specific percentage loss allowances are granted under DAS for the oil and spirits industries:

6.2.1 Oil industry

Handling losses may be claimed as a fixed loss allowance on product manufactured in South Africa at 0.25 per cent for petrol and 0.15 per cent for diesel and biodiesel of any quantity removed from a licensed manufacturing warehouse.

6.2.2 Spirits industry

Handling losses may be claimed as a fixed loss allowance at 1.5 per cent for any unpacked spirits, imported or locally manufactured, received in and entered for use in a licensed secondary spirits manufacturing warehouse. Should such spirits be removed from the secondary spirits manufacturing warehouse for re-processing at a primary spirits manufacturing warehouse, the licensee of the secondary spirits manufacturing warehouse must, prior to removal, pay the excise duty on the 1.5 per cent loss allowance received when the product was initially received into the secondary spirits manufacturing warehouse.

Handling losses may be claimed as a fixed loss allowance at 0.25 per cent for any unpacked imported spirits received and entered in a licensed customs and excise warehouse or any unpacked locally manufactured spirits received and entered in a licensed special storage warehouse. The licensee of a special storage warehouse must annually reflect all surplus stock of unpacked spirits that accumulated during that calendar year due to loss allowances as a receipt into warehouse on the excise account. The excise duty on any deficit in stock must be brought to account and paid, while such deficit in stock must be reflected as a non-duty paid removal on the excise account.

Transport losses may be claimed as a fixed loss allowance at 0.25 per cent for any unpacked spirits, imported or locally manufactured, removed from one licensed warehouse and entered into another licensed warehouse. Should the actual transport loss exceed the 0.25 per cent allowance, the consignor is liable for payment of the excise duty on such difference. Movements of unpacked spirits between primary spirits manufacturing warehouses do not qualify for such transport losses, but licensees may claim the full duty rebate on reasonable actual losses as manufacturing losses. The consignor is liable for the payment of excise duty on excessively high transport losses.

7. Successful regional implementation of DAS

The success achieved with the implementation of DAS was the result of several contributing factors. SARS consulted widely and continuously with affected industries and stakeholders for more than two years before implementation of DAS, especially for those industries more severely impacted. These consultations took the form of workshops and direct industry engagements where the basic principles of DAS were imparted and critical issues affecting the impact on business were negotiated. Key outcomes of these consultations were the agreement on cash neutrality and, flowing from this principle, the agreements on industry-specific payment terms. Importantly, the internal and external capacity building initiatives facilitated the relatively seamless implementation of DAS

Within the SACU context, SARS engaged directly with each BLNS country and its revenue authority to obtain regional acceptance of the DAS system. In-depth training in DAS excise administration was provided to both internal SARS excise operational staff and their counterparts in each BLNS country. SACU-wide stock takes of all locally manufactured bonded excisable goods were conducted successfully in all BLNS countries, similarly to domestic stock takes for manufacturers and distributors of bonded excise products in South Africa. Throughout the SACU region, stock figures were audited before warehouses were allowed to deregister, full closing down inspections were performed on licensed storage warehouses, and appropriate clearance and acquittal procedures were approved and put in place for effective excise collections on dutiable products.

CHAPTER IV – STRENGTHENING THE CURRENT DAS SYSTEM

1. Timeliness of a DAS review

It has been sixteen years since the conversion of the excise duty regime to the DAS system for the accounting, assessment and acquittal of excise duty liabilities. Both the compliance experience of the industries that are involved with excisable goods and the administrative experience of SARS in its operational application and enforcement of the excise regime have highlighted certain improvements that may strengthen the current DAS system. The following discussion highlights some of these aspects that may be considered in this timely review of the design of the DAS system for purposes of the rewrite of the excise duty legislation.

2. Institutional location of excise component

2.1 Independence of excise and customs components

The degree of institutional independence that exists between the excise tax and customs duty components within revenue authorities differ among countries internationally. The excise tax administration of imported excisable goods typically relies heavily on institutional assistance from the customs duty administration within most revenue authorities purely for the practical reasons of customs presence at points of entry and the resultant economies of scale. By contrast, a greater level of institutional independence is achieved in the excise tax administration of domestically manufactured excisable goods. Notably, value-added tax administration relies similarly on customs duty administration for imports, but enjoys far greater institutional independence compared to excise tax administration.

2.2 Appropriate integration of excise component

In addition, the location and organisational fit of the excise tax component within the revenue authority is important to clarify the roles of excise staff and the goals of the excise branch in the broader institutional context of the revenue authority. The objectives, activities and operational systems of the excise tax component needs to be sufficiently integrated into the organisational structure of the revenue authority to align tax enforcement efforts and resources, but without losing sight of the unique role and needs of the excise function in the organisation. The level of integration and cooperation between the excise tax component within the revenue authority and relevant government ministries, departments and agencies in the public sector is similarly important to align government's excise taxation with its broader socio-economic objectives and policies.

2.3 Recommendation

The institutional independence of the excise tax component within the revenue authority needs to be balanced against the most appropriate level of integration and cooperation of the excise tax administration function with the efforts and resources applied by the revenue authority and relevant public sector entities to achieve associated government objectives and policies. In this sense, the most suitable location of the excise tax component is very country-specific and should reflect the needs and realities of South Africa. The views of stakeholders are invited to inform this debate.

3. Point of application of excise taxation

Ideally the DAS system accounts for excise duties, assesses excise duty liability and collects excise duty payments due at source, i.e. as close as possible to the point of domestic manufacture when goods achieve their excisable character. However, while the duty liability under DAS is deemed to arise at a point as close as possible to the source of domestic manufacture of the excisable goods, in practice the deeming point for each excise product occurs at the most administratively feasible point for that specific industry.

3.1 Special case of *ad valorem* excise duty

In contrast to specific excise duties that are imposed on the weight, strength or quantity of the product, *ad valorem* excise duty is calculated based on the dutiable value of the excisable good. The dutiable value for motor vehicles is the recommended retail price to the end user, excluding VAT and the relevant *ad valorem* excise duty. For all other *ad valorem* goods, the dutiable value is the invoice price paid or payable for the goods, excluding VAT and the relevant *ad valorem* excise duty, when such goods are sold for home consumption in the ordinary course of trade, in the condition and the normal trade packing ready for sale in the retail trade, to any buyers not deemed to be related

The current application of *ad valorem* excise duty suffers from certain uncertainties in respect of the tax treatment of discounts, remissions and credits that reduce the invoice price and deductions that are allowed in respect of operational expenses (for example samples for own use and marketing). Certain industry-specific practices of devolving typical manufacturing activities that add value to the product beyond the conventional manufacturing stage also complicate the *ad valorem* excise calculation. For example, labelling adds significant brand value to cosmetic products, but sometimes this intrinsic aspect of packaging occurs after the current point of *ad valorem* duty application.

3.2 Exception for wine and other fermented beverages

The manufacturing sites for most excisable goods typically consist of the production facility, a manufacturing storage facility and a dispatch storage facility. These manufacturing sites are the source of the excise liability and are therefore subject to licensing as manufacturing warehouses (VM). By contrast, the manufacture of wine and other fermented beverages (excluding beer) ranges from pressing and fermentation through stabilisation, filtering, blending and fortification up to bottling. Such manufacturing sites extend beyond the pure manufacturing source of the excise liability and therefore require licensing as special manufacturing warehouses (SVM).

While all excisable goods are taxed at their manufacturing source under the DAS system, excise duties on the manufacture of wine and other fermented beverages (excluding beer) are only assessed at the time of the sale of these products into the domestic market. Contrary to the typical DAS treatment of ordinary excisable goods, wine and other fermented beverages (excluding beer) may therefore be stored non-duty paid in licensed storage warehouses (OS) for purposes of further maturation and are only assessed at the time of the sale of these products into the domestic market.

3.3 Recommendation

It is proposed that the current *ad valorem* excise duty administration be reviewed and the underlying legal provisions be clarified to provide the certainty necessary for consistent enforcement by SARS and enhanced compliance by taxpayers. Allowed deductions from the invoice price should be clearly described and the manufacturing processes that must form part of the *ad valorem* dutiable value determination should be unmistakably defined.

The special excise duty treatment of wine and other fermented beverages (excluding beer) as an exception to DAS is to a large extent a historical remnant of the pre-DAS excise administration. With the phased conversion to DAS in 2002, the wine and other fermented beverages (excluding beer) industries with their various interlinked sub-industries were considered too complex to be fully accommodated under DAS at that time. However, with the ordinary excisable industries already adhering to DAS and having had 14 years of DAS compliance and enforcement experience, the full application of DAS principles to the wine and other fermented beverages (excluding beer) industries should again be explored.

4. Accounting of excise liability and acquittal

The point at which excise duty liabilities are accounted for and eventually assessed under DAS begins with the registration and licensing of persons responsible for the production, use or storage of excisable goods, which in turn is based on the type of warehousing activities such a person will undertake. Acquittal of the excise duty liability is expected for all goods that are entered into the market for consumption within the Southern African Customs Union (SACU).

4.1 Registration and licensing

Registration is required for producers who fall below the production levels at which the relevant excisable goods attract duty, and for the users of excisable goods under rebate or refund in further processing. Licensing is required for producers who exceed the production levels at which the product starts to attract excise duties, and for the storage of excisable goods destined to be consumed outside SACU.

The distinction between registration and licensing is unclear for certain excisable goods, for example biodiesel production where taxpayers may be expected to both register and license. The purpose of registration should be to obtain information about a potential taxpayer with a view to monitoring the person's progress towards possibly obtaining licensee status. Licensing should be reserved for persons that become liable for the payment of excise duties and should therefore be distinct from registration.

4.2 Warehousing requirements

The type of warehousing activity the person will undertake, informs the specific licensing requirement. All locally manufactured excisable products destined for consumption within SACU are manufactured and stored in licensed manufacturing warehouses. No storage warehouses are allowed for locally manufactured products. Special storage warehouses are only permitted for products that are destined to be consumed outside SACU.

The current DAS manufacturing warehouse licences are extremely limiting in their restricted application to only one specific and exclusive excisable product. For example, a special

manufacturing warehouse that is licensed for the manufacture of wine may not keep a spirits by-product on the same premises, unless that spirits is contained on a section of the premises that is licensed separately as a secondary spirits warehouse. This historical separation of licences has become outdated in related industries where advances in production technologies call for the integration of manufacturing processes.

4.3 Accounting and payment

Production is recorded when excisable products enter the dispatch section of the manufacturing warehouse and excise duty is assessed upon the dispatch delivery note or an invoice being produced. Excise clients submit monthly and in certain instances quarterly excise accounts on the prescribed forms with fixed payment dates after the end of the accounting period in which the products were dispatched from the manufacturing warehouse to the local market or special storage warehouse.

The artificial restriction of manufacturing warehouse licences to one specific and exclusive excisable good has in some instances not only led to the unnecessary duplication of licences, but has also multiplied accounting and payment processes. A simplification of the warehouse licensing regime would therefore require a corresponding streamlining of accounting and payment systems to reduce the compliance costs of industry and the administrative burden on SARS.

4.4 Treatment of SACU removals

Domestic consumption of excisable goods is deemed to include removals of goods between South Africa and the BLNS countries (Botswana, Lesotho, Namibia and Swaziland) within the SACU region. This excise duty treatment of removals between South Africa and the BLNS countries is contrary to the new customs duty dispensation, which considers all movements of goods into the country as imports and those leaving the country as exports. As the excise administration for imported and exported excisable goods relies on the customs systems, it would be essential to adopt the approach of the new customs duty dispensation in respect of SACU removals for excise duty purposes as well.

4.5 Recommendation

It is recommended that the following proposed adjustments to the DAS excise duty system be considered for implementation after an adequate investigation into their appropriateness and potential impact on affected industries and the excise administration of SARS:

- Distinct criteria, processes and requirements should be developed for registration and licensing respectively. This should ensure that registration would provide adequate information and monitoring of potential taxpayers while licensing would be restricted to those persons liable for the payment of excise duties.
- The consolidation of manufacturing warehouse licenses should be explored for manufacturers of related excisable products within similar industries. The feasibility of a single licensing regime per excise tariff category should be examined, particularly in respect of alcoholic beverages where the current multiple licensing appears to be causing unnecessary duplication.
- The streamlining and simplification of the current multiple accounting and payment systems should be considered along with efforts to reduce the compliance and administrative burden of the compounded manufacturing licensing requirements.

- The current excise duty treatment of SACU removals as part of domestic consumption should cease and be aligned with the approach of the new customs duty dispensation that treats all movements of goods into the country as imports and those leaving the country as exports.

5. Payment terms for respective excise products

Differential payment terms exist per excise product industry in relation to their distinguishing operating cycles. Differences in basic production, secondary production, storage and removal cycles inform these industry-specific payment terms. The relevant assessed excise duty must be paid to SARS within the prescribed industry-specific payment period after the end of the accounting month in which the products were dispatched from the dispatch section of the manufacturing warehouse.

5.1 Basis of current payment periods

At the introduction of DAS, payment periods were determined based on a number of principle considerations. These included:

- The reduction of licensed storage warehouses reduced SARS' administrative processes, but expedited excise payments by industry to the moment when excise goods leave manufacturing warehouses for the home market.
- The policy decision was taken that the shift in payment point under DAS should be implemented on a cash neutral basis and that assessed excise duties should be collected on an instalment plan without interest.
- Payment periods were calculated based on the typical operating cycle of the particular excise product types of specific industries. In practice, it meant that payment would be due after licensees had recovered excise duties from debtors so as to not be out of pocket upon payment to SARS.
- SARS had always maintained that the payment terms and periods that were determined for the implementation and phasing in of DAS may be revisited at any future point in time, in consultation with industry.

5.2 Appropriateness of current payment terms

The argument has been put forward that excise product industries will suffer negative cash-flow implications if too stringent payment terms require the settling of their excise liabilities to SARS before they can collect these excise duties from their customers. However, this line of reasoning should realistically only hold for the once-off cash-flow effect at the time of the introduction of such payment terms under DAS. Arguably, the incoming payments stream from customers and debtors thereafter would offset the future excise payments that need to be made to SARS.

In addition, it has become evident from anecdotal industry reports that some current excise payment cycles have in fact come to include both production and retail supply time periods. The excise product industries provided the initial data to SARS upon which the payment terms were determined and implemented in good faith. It may therefore be necessary to revisit and recalculate these payment terms to better reflect current industry operating cycles and cash flow realities.

The differential payment terms per excise product industry has caused significant administrative difficulties for SARS. Considering the complexity of administering such divergent industry-specific payment terms and the perceived anomalies in the cash-flow and operating cycle arguments for maintaining the current payment terms, a holistic review of these industry payment periods is perhaps timely.

5.3 Opportunity to review payment terms

A review of the excise payment terms would in itself prove complicated, as many licensees within particular industries apply unique manufacturing processes, even though they in essentially manufacture similar excisable goods. An industry-wide investigation into suitable payment terms could therefore prove problematic and bi-lateral engagements at licensee level may be necessary to establish operating cycles objectively.

A SARS investigation would need to identify representative manufacturers in each of the dutiable industries, taking into consideration the scale of their activities and their market placement. The sample of manufacturers must be sufficiently diverse so that an analysis of their operations would demonstrate standard industry practice. The full description of the sales, purchasing and stock systems, as well as the timing of each aspect in the operating cycle, would need to be unpacked. Care should be taken to also include smaller manufacturers to consider the particular timing of smaller production cycles.

5.4 Recommendation

It is recommended that SARS undertake a systematic review of the current payment terms for the specific excisable products to consider their appropriateness and effectiveness in achieving equitable payment periods for the respective industries. It is suggested that SARS consistently and uniformly apply the following principles in its review of the payment terms for all excise licensees:

- The payment periods for all excise clients should as far as possible follow similar payment cycles, for example 30, 60 or 90 day cycles.
- One payment should be effected per excise account, with no split-payments allowed for the settlement of excise liabilities arising from a single accounting period.
- The cash-flow of neither SARS nor industry should, as far as possible, be negatively affected, taking into account that the once-off impact of an adjustment in payment terms would be offset by regular excise payments received in the longer term.

For purposes of discussion only and to facilitate the necessary engagement with the respective excise product industries, the following periods are suggested purely as a way forward towards developing consistent payment terms:

- Tobacco products – 30 (maximum 60) days.
- Beer – 30 (maximum 60) days.
- Unblended spirits – 30 days.
- Blended spirits – 30 (maximum 90) days, keeping in mind the time-consuming processing activities required after initial production.
- Fuel products – 30 (maximum 60) days.
- Environmental levy goods – 30 days.
- Health promotion levy goods – 30 days.
- *Ad valorem* excise goods – 30 days.

- Wine and other fermented beverages – 30 days throughout the year.

In order to determine and finalise changes to the current payment terms, SARS would extensively consult with representative industry bodies and respective licensees where necessary. As stated before, the excise product industries have been aware that SARS intended to review their payment periods from time to time. A sufficient period of at least three months of consultations is foreseen to provide time for adequate engagement with and inputs from stakeholders.

6. Movements of excisable goods

Most manufacturers of excisable goods welcomed the conversion to a DAS system of accounting for and collecting excise duties. The benefits of DAS around more accurate duty forecasts, smaller bonded areas of control and reduced administration applied equally to both SARS and affected industries. While industry therefore welcomed DAS in principle, it has been concerned about cash neutrality and possible loss of revenue due to inadequate rebates and refunds of duties on movements of excisable goods.

The agreement between SARS and industry to implement payment periods that would minimise the risk of the cash flow of either SARS or industry being negatively affected has been covered in detail above under the payment period discussion. However, the review of the various movements of excisable goods and the resultant rebates and refunds available to industry warrants further discussion.

6.1 Handling of non-duty paid product

In general, manufacturers of excisable goods may claim actual working losses of non-duty paid product that occurred during their manufacturing operations as a deduction against their excise liability. These actual operational losses typically occur in the handling of the product due to spills, leaks, spoils or wastes during the manufacturing process or during transportation thereafter. By contrast, industry-specific percentage fixed loss allowances are granted under DAS for the oil and spirits industries.

Handling losses may be claimed at 0.25 per cent for petrol and 0.15 per cent for diesel and biodiesel on any quantity of such product manufactured and removed from a licensed manufacturing warehouse. Handling losses may also be claimed at 0.25 per cent for any unpacked spirits received and entered in a licensed special storage warehouse. Handling losses may furthermore be claimed at 1.5 per cent for any unpacked spirits received in and entered for use in a licensed secondary spirits manufacturing warehouse.

Transport losses may be claimed at 0.25 per cent for any unpacked spirits removed from one licensed warehouse and entered into another licensed warehouse. Movements of unpacked spirits between primary spirits manufacturing warehouses do not qualify for such transport losses, but licensees may claim the full duty rebate on reasonable actual losses as manufacturing losses. The consignors of these removals are liable for the payment of excise duties on excessively high transport losses.

6.2 Transfers of non-duty paid product

Transfers between licensed warehouses would be of non-duty-paid product and would therefore occur under security with bond guarantees to insure that the outstanding excise

duties are recoverable. Such in-bond movements or transfers within relevant industries (e.g. wine or spirits) hold no duty implications for SARS or industry, provided it has not been cleared for home consumption. However, strict excise controls and monitoring are still required to ensure that the duties will be correctly assessed and paid once the goods leave the excise controlled area of licensed warehousing.

In-bond transfers of non-duty paid product typically occur with the movement of locally manufactured goods for consumption outside the country. This may take the form of transfers from a licensed manufacturing warehouse to a licensed storage warehouse or between licensed storage warehouses. In addition, manufacturers may also need to move excisable goods as inputs in their own or another manufacturing process. This may involve transfers between licensed manufacturing warehouses.

All these movements would require a full rebate of duty to prevent revenue losses for industry and possible double taxation of the excisable product. In all these instances, adequate rebate provisions are therefore required by industry to permit the offset of the duty liability against the excise account of the sender and the transfer of the duty liability to the excise account of the receiver of these goods.

6.3 Returns of duty-paid product

If the excisable goods that are returned had actually entered the market and became duty-paid, such returns from the market to the licensed warehouse area would require duty refunds to prevent revenue losses to industry and potential double taxation of re-used goods. These refunds of excise duties would be conditional and dependent on adequate proof that the returned goods were either re-processed or destroyed by the licensed manufacturer.

As offsets against the excise account of the manufacturer is only permitted if the returned products were in fact re-processed or destroyed under excise supervision, the controls over such excise account offsets are dependent on batch-labelling by the manufacturer. This practice allows SARS to trace each individual product back to its source invoice to verify whether duty was originally paid on the specific batch of products and whether an excise account offset may be allowed.

6.4 Recommendation

It is recommended that SARS systematically analyse the current industry-specific percentage fixed loss allowances of section 75, as well as the rebate and refund provisions of Schedule No.6 to the 1964 Act, for their appropriateness in preventing unnecessary income losses and possible double taxation of excisable goods. Considering the scope and application of the present loss allowances and rebate / refund provisions, it is suggested that this investigation be undertaken over time in a phased approach that would be underpinned by adequate consultations with affected industries. The outcome of this study would inform the rewrite of these provisions in the new excise legislation.

7. Combating illicit trade

The DAS excise administration is largely based on an excise accounting system of self-declaration by registrants and licensees in the various excise industries. SARS' enforcement measures to combat

the illicit trade in excisable goods therefore rely heavily on risk-profiling of taxpayers. As such, the risk factors that SARS considers are critical in determining the need for physical audit and verification checks of identified excise transactions and taxpayers. The development of single view profiling of taxpayers and the roll-out of integrated audits across all the various tax types that SARS administers would assist greatly in this respect.

The following additional interventions may complement SARS' excise administration significantly by providing focused supplementary information on specific excise transactions and taxpayers to further inform current risk profiling and enforcement:

- A system of accreditation may be employed to encourage compliance by excise taxpayers, but also to identify and codify the degree of compliance that may be expected of such clients based on their historical practices. Such excise accreditation would need to be linked and harmonised with a corresponding customs system of accreditation for importers and exporters.
- It is important that a comprehensive database time series be developed and maintained for each excisable industry in order that specific excise taxpayers may be compared against their industry's average manufacturing yield, operational and transit losses, stocks on hand, sales levels, customer payment periods, etc. to inform illicit trade interventions.
- The apparent stockpiling by certain manufacturers of excisable goods ahead of duty rate increases in order to pre-empt their excise duty liability and exploit the duty increase for profiteering requires investigation. Budget 2018 announced the intention to provide suitable anti-forestalling measures in this regard.
- Up to date technologies and trends in the design and application of fiscal markers and tracking and tracing measures should be explored to combat the illicit trade in excisable goods and to meet South Africa's international treaty obligations. The Anti-Illicit Trade Protocol under the Framework Convention on Tobacco Control of the World Health Organisation requires South Africa as a signatory to implement independent fiscal marker and tracking and tracing technologies for tobacco products. It is proposed that these methodologies also be explored for possible phased implementation for other suitable excisable goods.

As the ultimate intervention against the illicit trade in excisable goods remains physical audit and verification checks, this audit and enforcement capacity in SARS should be preserved and strengthened. The supplementary cross-cutting information that was highlighted above for risk-profiling purposes in excise enforcement would similarly assist in facilitating SARS' integrated audit efforts across tax types to maximise their anti-illicit impact.

8. Other reform considerations

8.1 Timing of Budget excise adjustments

The annual increases in excise duty rates at the time of the Budget currently take effect at the moment the Minister of Finance tables the Budget documentation containing the tax proposals in Parliament. This historical practice predates DAS and is a remnant of the earlier excise regime when excise duties were collected on sales from storage warehouses where goods about to be released into the market had to immediately attract the higher excise duty rates. Arguably, the need to give immediate effect to the annual Budget increases in

excise duty rates may have been overtaken by DAS where the higher rates are applied earlier in the distribution chain upon goods leaving the point of manufacture.

The current excise duty rate adjustments at the time of the Budget are determined by the National Treasury based on expected price increases of excisable goods in the coming year. However, the National Treasury formula dictates that excise duty rates must increase by at least the expected inflation rate. While increases in the excise duty rate structure are therefore certain, the precise level of the increase is confidential until the announcement thereof by the Minister of Finance in his Budget Speech. As a result, the immediate application thereafter of the Budget increases in excise duty rates poses administrative challenges for SARS and compliance complexities for industry.

It is accordingly proposed that the implications of applying the Budget increases of excise duty rates at a designated future post-Budget date and time be considered compared to the effects of the current practice of immediately applying the rates increases at Budget time. Options that could be explored include applying the rates increases from 1 April to coincide with the start of the fiscal year, or timing the rates increases to correspond with the respective excise accounting and payment periods of the various excisable goods. Such an adjustment in the effective date would naturally need to be coupled with suitable anti-forestalling measures.

8.2 Excise legal tax design

The current excise duty legal framework is comprised of the primary legislation contained in the 1964 Act, together with its schedules, as well as the secondary legislation contained as regulations in the rules. In addition to this legal framework, SARS has over time developed and maintained internal and external excise tax guides and standard operating procedures that have no legal status, but are used to guide officials in the execution of their administrative and enforcement functions and to assist excisable industries to comply with the application of the excise duty legal framework.

The new customs duty legal framework contained in the Customs Duty Act, No.30 of 2014, and the Customs Control Act, No.31 of 2014, and more specifically its regulatory rules has incorporated as far as possible the previous internal and external customs duty guides and standard operating procedures as part of the overarching legislation. The objective herewith was to remove any uncertainty with regard to the application of the customs duty legal provisions that may arise when policy documents external to the legislation are unintentionally misinterpreted in conflict with the law or sometimes not timeously updated.

It is the intention to harmonise the rewrite of the excise duty legislation with the legal drafting style of the new customs legal framework. The status and content of the current internal and external excise tax guides and standard operating procedures would therefore have to be reviewed. An important consideration would be the greater transparency and improved governance of including these operational policies in legislation, which would certainly enhance taxpayer compliance and consistent excise enforcement.

CHAPTER V – INTERNATIONAL EXPERIENCE WITH DAS

1. Selected international examples

It is inordinately difficult to obtain accurate information on the international experience of comparable countries with excise duty regimes that are administered through the DAS system for the accounting, assessment and acquittal of excise duty liabilities. One reason is that few countries with DAS excise systems use the same DAS terminology as South Africa, which works against conventional research methodologies for sourcing comparable international country data. Another problem is that even where appropriate international country experience is found, the countries need to be suitably representative of comparable key geographical areas globally. The following selected international examples draw on information provided directly by these countries and SARS wishes to sincerely thank the revenue authorities in these countries for their assistance.

2. The Africa Experience - Zimbabwe

2.1 Institutional location of excise component

The excise and customs components of the Zimbabwe Revenue Authority are integrated into a single division under a separate Commissioner for Customs and Excise. The functional roles of staff are well clarified through respective job descriptions and operational procedures. The excise objectives, activities and operational systems are drawn from and inextricably intertwined with the broad vision, mission, strategic goals and quality policies of the revenue authority. The excise function cooperates greatly with other government entities in the execution of its functions, for example the Standards Association for the certification of products, the Ministry of Health for the analysis of products and the Police among others.

2.2 Point of application of excise taxation

The excise liability arises upon manufacture for all excisable products. All excisable goods are accounted for at the production account point (PAP). This is a precise clearly defined physical point through which all excisable goods must be channelled before they can be removed from licensed premises and at which the physical quantities are counted and accurately recorded. The excise duty liability becomes due upon removal of the excisable goods from the licensed premises. The various excisable products have different PAP points for the accounting of the excise duty liability. For example, the PAP for spirits, wines and clear beer is at the capping stage of manufacture, whereas the PAP for cigarettes is at the packing stage of production.

2.3 Accounting of excise liability and acquittal

2.3.1 Registration and licensing

All manufacturers of excisable goods must be registered and licensed, while licences must be renewed annually. The new registration procedure of excise manufacturers require written applications with information on the nature of the goods to be produced, the process of manufacture to be used, the premises at which manufacturing will take place and a sketch map of the premises. Where the factory

consists of portions of a building or multiple buildings, an explanatory diagram must be furnished.

The applicant must also attach his rebate registration, business plan, projected cash flows, estimated sales for each excisable product per year for 3 years (broken down by projected production output in US Dollars and projected excise duty liability per year), Investment License with the Zimbabwe Investment Authority for foreign investors, Zimbabwean Revenue Authority Tax Clearance certificate, proof of corporate registration with the Registrar of Companies, Certificate of Incorporation, and approval letters from the Standards Association of Zimbabwe.

Every applicant needs to pass a physical pre-licensing inspection, where after the applicant must furnish an acceptable excise manufacturer's bond, rebates bond, Insurer's cover letter and Assumption of Obligations under the bond, and resolution of the Board of Directors for appointing a principal officer.

2.3.2 Warehousing requirements

Licensed premises are limited to the manufacturing of excisable goods only. However, customs bonded warehouses may be used to store finished excisable products after removal from a licensed premise without payment of duty. Exports and other removals that do not attract excise duty can also be made in bond from licensed premises.

A license to manufacture liquor entitles the licensee to produce all types of alcoholic beverages on the licensed premises, while a license to manufacture tobacco entitles the licensee to produce all tobacco products on the licensed premises. However, whenever a licensee manufactures more than one of the commodities set out in the excise tariff or the surtax tariff, separate licences are required in respect of each commodity. In this respect, manufacturing includes mixing and packaging.

2.3.3 Accounting and payment

The accounting period for all manufacturers of excisable goods is a month. A month is defined to include a calendar month or any other period approved by the Commissioner for Customs and Excise. The payment system for the respective excisable products and industries is also the same.

2.3.4 Treatment of regional customs unions

Zimbabwe is a member of the Common Market for Eastern and Southern Africa (COMESA). In terms of the COMESA Agreement, customs duties are suppressed within the regional customs union. However, excise duties are payable upon the importation of excisable products with a regional origin.

2.4 Payment terms for respective excise products

2.4.1 Basis of current payment periods

All excise duty payments have to be submitted on or before the 20th day of the month following the removal thereof from the licensed manufacturing warehouse.

The grace period allows ample time for manufacturers to compile their excise account returns and make the necessary duty payments. The payment period generally caters for all normal operating business cycles and there are no exceptions to this payment period.

2.4.2 Appropriateness of current payment terms

The current uniform payment terms for all excisable products is considered appropriate, because it allows manufacturers sufficient time to collect the proceeds from sales made during the previous month and to remit excise payments to the revenue authority. Although the due date for the excise duty payment is set out in law, manufacturers that experience difficulty in making the payment on time can make written representations to the revenue authority to motivate for an agreed temporary payment plan.

2.5 Movements of excisable goods

2.5.1 Handling of non-duty paid product

Maximum loss allowances are prescribed for each production process when manufacturing wet goods. Maximum allowances are also granted for losses incurred during the storage of wet goods.

MAXIMUM ALLOWANCES FOR DEFICIENCIES IN ALE, BEER, STOUT, CIDER IN WOOD

<i>Period in warehouse</i>	<i>Allowance</i>
1. Less than 2 months	Nil
2. Not less than 2 months and not more than 3 months	1%
3. More than 3 months and not more than 6 months	2%
4. More than 6 months and not more than 9 months	3%
5. More than 9 months and not more than 12 months	4%
6. More than 12 months	5%

MAXIMUM ALLOWANCES FOR DEFICIENCIES IN SPIRITS IN WOOD

<i>Period in warehouse</i>	<i>Allowance</i>	
	<i>In casks of under 365 litres content</i>	<i>In casks of 365 litres content and over</i>
1. Not more than 6 months	7%	5%
2. More than 6 months and not more than 12 months	10%	8%
3. More than 12 months and not more than 2 years	13%	13%
4. More than 2 years and not more than 3 years	16%	16%
5. More than 3 years and not more than 4 years	19%	19%
6. More than 4 years	22%	20%

MAXIMUM ALLOWANCES FOR DEFICIENCIES IN WINE IN WOOD

<i>Period in warehouse</i>	<i>Allowance</i>		
	<i>In casks of under 135 litres content</i>	<i>In casks of not less than 135 litres and under 320 litres content</i>	<i>In casks of 320 litres content and over</i>
1. Less than 6 months	Nil	Nil	Nil
2. Not less than 6 months and not more than 1 year	2%	1.5%	1%
3. More than 1 year and not more than 2 years	4%	3%	2%
4. More than 2 years	6%	4.5%	3%

MAXIMUM OPERATIONAL LOSS ALLOWANCES FOR WET GOODS IN WAREHOUSES

<i>Operation</i>	<i>Maximum % loss allowed</i>
1. Racking	1%
2. Bottling	2%
3. Blending	1%
4. Mixing	1%
5. Fining	1%
6. Blending and bottling	2%
7. Mixing and bottling	2%
8. Racking and blending	2%
9. Racking and mixing	2%
10. Racking and bottling	2%

2.5.2 Transfers of non-duty paid product

Transfers of non-duty paid excise products between licensed manufacturers are only allowed for further processing, for example blending, bottling, packing etc. Such movements must be authorised in advance by the excise office through the approval of a non-duty paid removal warrant. The warrant is an undertaking by the transferor and recipient to account for the excise duty due should the products go missing. The receiving manufacturer must send a signed copy of the warrant to the excise office as proof of receipt. At the end of the month, both the transferor and recipient must attach a copy of the processed removal warrant to their respective excise accounts.

2.5.3 Returns of duty-paid product

Market returns of duty-paid excise products are only allowed as a result of faulty manufacture. The goods may only be returned to the licensed manufacturing premises for the removal of the defect or for destruction. The return is conditional upon sufficient motivation from the manufacturer and advanced authorisation from the excise office. An excise tax refund may only be claimed if the goods are returned to the licensed manufacturing premises within 6 months from the date of removal.

2.6 Combating illicit trade

The revenue authority employs single view risk profiling across the various tax types for all manufacturers of excisable goods. A comparative industry database on excise risk factors, such as manufacturing yield, operational and transit losses, stocks on hand, sales levels and customer payment periods, is not maintained due to the huge differences in the size of the manufacturers in each excise product category.

A system of taxpayer accreditation is applied to encourage overall taxpayer compliance. Excise clients participate in the taxpayer appreciation program where the company with the highest contribution to excise duty revenue is recognized. An overall winner for the highest contributor in the customs division and across all other tax types is recognized as well.

The stockpiling levels of manufacturers of excisable goods are not significant enough to justify the application of anti-forestalling measures. Apparent cash flow constraints seem to prevent manufacturers of excisable goods from stockpiling their products for any length of time in advance of actual sales to their customers.

Feasibility studies for developing and implementing a tracking and tracing system for excisable goods is still under way. In the interim, fuel marking and tax stamps are applied as fiscal marker measures. Excise-specific physical audits continue to be used as an efficient enforcement method, while integrated audits across tax types are increasingly employed by the revenue authority's Investigations Division as a holistic enforcement tool.

2.7 Other reform considerations

2.7.1 Timing of Budget excise adjustments

The effective time of implementation of new excise duties and adjustments in the rates of existing excise duties that arise from the annual budget is outlined in the statutory instrument that is gazetted to give effect to the changes emanating from the budget pronouncement. Some of the budget announcements may take immediate effect, while others are implemented at a future date specified in the statutory instrument that gives effect to the budget proposals.

2.7.2 Excise legal tax design

The revenue authority applies internal and external tax guides and standard operating procedures to harmonise tax enforcement and facilitate tax compliance. While all these policy documents and procedures draw from the primary and secondary excise legislation, they are, however, located outside the legislative framework and are therefore without legal status. Also, the excise legislative framework is not explicitly based on international benchmarking.

3. The European Union Experience – Finland, Belgium, United Kingdom

3.1 Institutional location of excise component

The Finnish customs authorities are responsible for administering excise duties until 31 December 2016. As from the beginning of 2017, the excise function will separate from the customs function and be moved to the Finnish tax administration authorities.

The Belgian excise authorities are part of the General Administration of Customs and Excise within the Federal Public Service of Finances. The customs and excise functions are integrated and have multiple links with other European Union (EU) member states through EU comitology procedures.

In the United Kingdom (UK), Customs and Indirect Tax (incorporating Excise) are separate Directorates within the Business Tax Division of HM Revenue and Customs (HMRC). Indirect Tax is responsible for excise administration policy, targeting, monitoring and enforcing the collection of duties on alcohol, tobacco, oils and gambling. The Indirect Tax and Customs Directorates cooperate closely on strategic objectives, while HMRC also works closely with other UK government departments and agencies such as the Health and Safety Executive, Environment Agency and Trading Standards to combat excise fraud.

3.2 Point of application of excise taxation

Harmonised excise duties in the EU member states are regulated by Council Directive and implemented through national legislation. The harmonised excise duties apply to alcohol and alcoholic beverages, most tobacco products, liquid fuels, electricity, and certain other fuels. The focus of the taxation of fuels used in transport has shifted towards a carbon dioxide or climate change tax. National non-harmonised excise duties in Finland are levied on sweets, ice cream, soft drinks, beverage packaging, and waste delivered to municipal landfill sites, while the UK also taxes gambling.

Excisable goods become subject to excise taxation at time of manufacture or importation. The excise duties are payable when the excise goods are released for domestic consumption in terms of EU Council Directive 2008/118/EC. In Belgium, some excise goods are chargeable at the time of supply to the retailer (coal) or final consumer (natural gas and electricity). In the UK, the excise duties on goods outside a duty suspension or duty deferment arrangement may be collected by assessing the person holding the goods at any point in the supply chain, wholesale or retail sector.

3.3 Accounting of excise liability and acquittal

3.3.1 Registration and licensing

Harmonised registration and licensing in the EU member states are regulated by Council Directive 2008/118/EC and implemented through national legislation. Manufacturers and importers of excise goods are generally required to register themselves and license their premises. The legal requirements for registration include capacity for record keeping and duty payment, security of both premises and duty on goods.

The Customs authority needs to authorise the activities of warehouse keepers, registered consignees, registered consignors and tax representatives. A separate authorisation is also required for the keeping of a tax warehouse, which needs to be operated by an authorised warehouse keeper. Exemptions from registration and licensing may be granted if the manufacture relates purely to research or if the volumes and nature of production are below a minimum limit for personal use.

In the UK, businesses within an excise supply chain may be prohibited from dealing in excise goods until approved by HMRC. Upon approval, businesses are required to carry out anti-fraud due diligence on their suppliers and customers. A fit and proper persons test may also be applied to fulfil the requirement for a competent person in the business to submit a business case to test the financial viability and general credibility of the intended activity of the enterprise.

3.3.2 Warehousing requirements

The Customs authority authorises tax warehouses that will be adequately administered by the applicant and can be effectively controlled by the Customs authority. Tax warehouses are authorised partly per product type (coal, gas and alcohol products) and partly per industry (tobacco and mineral oils). The tax warehouses should be suitable and used for the authorised activity of the warehouse keeper applicant. Warehouses are essentially limited to manufacturing, but storage warehouses are allowed for excise goods that are to be exported under suspension of excise duties. The export of excise goods occurs under customs procedures with an operational and systems link to excise procedures to keep the products under surveillance.

In the UK, three types of warehouses may request approval from HMRC. Production warehouses are approved to produce excise products and store them in duty suspension. General storage and distribution warehouses are approved to receive and dispatch a certain throughput of duty suspended goods from producers, other excise warehouses in the UK and EU, and third country imports and exports. Trade facility warehouses are approved to carry out specific functions or processes where a business can demonstrate the need to hold duty suspended goods, but does not meet the throughput requirements for general storage and distribution approval. HMRC generally require oil products to be moved duty paid and typically only approve import, refinery and export warehouses, while storage and distribution warehouses are in the main not allowed.

3.3.3 Accounting and payment

In Finland and Belgium, authorised warehouse keepers, registered consignees and tax representatives have to submit tax declarations with payment for every tax period of one calendar month no later than the 18th day of the month following the tax period. The accounting and payment periods and systems for the respective excisable products and industries are similar.

In the UK, duty may be suspended if excise goods are stored in a registered factory premises by a manufacturer, in a manufacturer's own store that is registered with HMRC, and an excise warehouse for certain products intended for the UK market. Deferred duty payments are made monthly, but payment dates vary based on long

standing arrangements with specific industries. The staggered duty payments for the respective industries and various products ensure an even administrative burden and cash flow for the collection agency. Tobacco and alcohol products have monthly accounting periods with payments deferred for another month. Oil products have monthly accounting periods from mid-month to mid-month with duty payable at the end of the month in which the accounting period ends.

3.3.4 Treatment of regional customs unions

Excise duties are levied on excisable goods produced within an EU member state, received from another EU member state or imported from outside the EU. Excisable goods can be produced, processed, held and moved under a duty suspension arrangement without payment of excise duty. The purpose of the duty suspension arrangement is to facilitate the free movement of products between EU member states. The duty suspension arrangement allows only for product to be moved between authorised warehouse keepers, registered consignors and registered consignees of EU member states. Consignees may be temporarily registered to receive a specific consignment of product under suspension of duty. Movements of excise goods between EU member states are regulated by Council directive 2008/118/CE. Excise duty must be paid when the excisable goods are released for consumption in an EU member state. The release for consumption terminates the suspension of duty arrangement.

3.4 Payment terms for respective excise products

3.4.1 Basis of current payment periods

In Finland, the payment periods for the respective excisable products and industries are similar. The payment periods therefore do not reflect the operating cycles of particular excise product types of specific industries. Despite the standard monthly accounting and payment system, taxpayers with fewer excisable goods to declare are allowed to submit accounts and payments less frequently up to once a year.

In Belgium, excise payments must occur on the Thursday following the week of the release of the excise goods for home consumption and a conditional delay of one week may be considered. Excise payments by gas and electricity distributors must occur the month following the release for home consumption. This exception is linked to the billing system of gas and electricity distributors.

In the UK, excise duty payments are made monthly, but payment dates are staggered for respective excisable industries and products to ensure an even administrative burden and cash flow. The payment terms for smaller producers are generally not different, but small beer producers have lower excise duty rates and smaller biofuels producers account for and pay duty quarterly.

3.4.2 Appropriateness of current payment terms

The Finnish and Belgian payment terms are accepted by excisable industries as appropriate and have not been subject to any complaints or review processes. In the UK, the staggered monthly excise duty payments are considered convenient for both

the collection agency and industry, particularly as the longstanding payment terms create certainty and uniformity.

3.5 Movements of excisable goods

3.5.1 Handling of non-duty paid product

Finland does not apply rules for fixed loss allowances, but case-specific actual losses are allowed calculated according to a producer's specific and individual margins of error for losses. Actual losses do not have quantitative limits, but are considered against the context of the nature of the particular excise product and the movements thereof under duty suspension.

Belgium allows tolerances for production losses expressed as a specific percentage for each particular excisable good. For example, the tolerance loss for benzene is 0.4%, while it is zero percent for tobacco products. In the case of irremediable production losses due to an unpredictable event, no excise duties are charged on such permanently lost goods.

In the UK, actual losses are allowed for irretrievable losses or total destruction of excise goods when such goods are rendered unusable as excise goods as a result of unforeseen circumstances, force majeure or authorisation by the competent authorities. In the case of oils, a general acceptable loss of up to 0.5% above the previous annual average natural wastage is acceptable, but losses above this require adequate explanation to prevent duty liability.

3.5.2 Transfers of non-duty paid product

The EU duty suspension arrangement (Council Directive 2008/118/EC) allows excise products to be produced, processed, held and moved without payment of excise duty under certain circumstances. The suspension of excise duty allows excise goods to be moved only between licence holders for the purpose of facilitating free movement between member states. These movements are allowed between authorised warehouse keepers, registered consignors and registered consignees. Temporary registered consignees may also receive a specific consignment of products under suspension of duty. Authorisations for transfers of non-duty paid product require appropriate and sufficient security to be lodged.

The UK does not allow duty free movements of oil unless such oil is heading for export or is unfinished product, except in rare and exceptional specified circumstances that amount to an emergency.

3.5.3 Returns of duty-paid product

In Finland, authorised warehouse keepers are allowed to deduct from their excise duty liability those excise duties previously paid for goods returned during the same tax period to the tax warehouse. These deductions are limited to the returns of off-specification products and are not allowed for natural deterioration due to the age of products.

Belgium similarly does not allow duty-paid product released for home consumption to be returned to warehouses, except for export or for the restoration of off-specification products.

The UK reimburses excise duties to eligible claimants when eligible excise goods have not been and will not be consumed domestically, provided certain conditions and requirements are met. This includes off-specification excise goods that are returned to an excise warehouse for reworking or destruction, with the special treatment of tobacco and oil products. Returns of duty-paid tobacco products to registered stores are allowed, but only tobacco products that have been irretrievably damaged may be returned to an excise warehouse. Credits are allowed for fuel that is accidentally contaminated or if petrol vapour is recovered and condensed, otherwise it has to be stored in duty-paid storage.

3.6 Combating illicit trade

Finland uses risk criteria for its annual audit planning and real-time risk analysis is based on industry-specific risk rules and risk criteria to select audit cases and target enforcement interventions. As an EU member state, it also accesses the highly developed computerised EU Excise Movements and Control System (EMCS) for tracing the movement of excise goods travelling within the EU under duty suspension as the basis for further risk criteria.

Belgium utilises risk analysis methods to fight excise fraud, based on ongoing investigations into industry-specific operators and their practices. It applies anti-forestalling measures for tobacco products that apply a mandatory delay in the sale of stocks of tobacco products by the tobacco industry in the case of a tobacco excise rate change. The current fiscal marker for tobacco products in Belgium is designed as a fiscal stamp affixed to the product packaging.

The UK currently applies an invisible marker on the packaging of legitimate cigarettes and hand rolling tobacco and manufacturers are required to notify the authorities of the supply chain for product that was seized while being smuggled. The UK will be implementing the track and trace requirements of the WHO FCTC Anti-Illicit Trade Protocol as part of the EU Tobacco Products Directive from 2019, but the details of implementation have not yet been agreed.

The UK considers illicit trade in tobacco as a particularly significant concern and has designed a targeted strategy to tackle illicit tobacco along its entire supply chain from tobacco farmers through manufacturing and distribution of tobacco products to the end use thereof by consumers. Anti-forestalling arrangements operate for tobacco products for the 3 months ahead of the annual budget statement in March.

The UK has likewise devised an anti-illicit alcohol strategy to combat the trade in illegal alcohol products. A system of duty stamps is applied to bottles and retail containers of spirits-based or wine-based beverages with a capacity of 35cl or more and an alcoholic strength of 30% alcohol by volume or more. The absence of the stamp indicates the non-payment of excise duties on these products, renders the goods liable to seizure and allows penalties against the person holding the goods.

The UK applies risk-profiling in the oil sector based on compliance history, financial stability and the type of business industry. Rebated oils are marked using the Euromarker common to

EU states and also additional UK-only markers. Advanced technologies are applied to reveal when these markers and dyes have been removed through laundering for the illegal sale of the rebated fuel in the retail market. This requires surveillance enforcement with the capacity and skills to perform road testing, sample fuel tanks and audit the premises where the fuel originated.

Physical audits in Finland are based on annual audit planning with real time physical audits being limited to border control at points of entry. The annual audit plan covers about 50% of the audits conducted in a year, while the other 50% of audit capacity is left open for acute auditing of serious ad hoc cases that arise during the course of the year.

3.7 Other reform considerations

3.7.1 Timing of Budget excise adjustments

Once the annual budget in Belgium is approved, the necessary excise rate changes are implemented at the designated time in the future that was announced in the Budget, in accordance with the necessary legal requirements to fulfil government's policy objectives.

The United Kingdom announces excise duty rate changes in the Budget and Parliament specifies when these rate changes take effect, i.e. on Budget Day or at some point in the future. In practice, excise duty rate changes typically take effect a few days after the Budget. Parliament may also specify future excise rate changes in coming years in the Budget to provide certainty for businesses and to enable excise industries to factor future rate changes into their business and investment plans. The UK also has the legal facility to have more than one Budget in any calendar year if the need arises.

3.7.2 Excise legal tax design

Excise legislation is based on the European Union legal framework of directives and regulations. Procedures that are not detailed in the EU legal provisions are the subject of interpretation by the EU Administration in the form of an administrative comment.

The United Kingdom excise legislative framework is based on the requirements of the European Commission. Operating procedures are applied through both primary and secondary legislation, which also often applies the requirements of the required EU legislation and directives. This excise legal framework is interpreted through various public notices and guidance available to both businesses and departmental colleagues.

4. The Asia-Pacific Experience – New Zealand

4.1 Institutional location of excise component

The various government policies in respect of excisable goods are determined by separate government departments. The Treasury is responsible for setting excise duty rates, the Ministries of Health and Justice set policies for tobacco, and the Ministries of Transport and

Business, Innovation and Employment set policies for fuel. This calls for great levels of cooperation between these various government departments to coordinate their respective policies on excisable products and their markets.

The administration and collection of excise duties is the responsibility of the New Zealand Customs Service, which is a separate government agency from the Inland Revenue Department. However, the Customs Service works closely with Inland Revenue, primarily on issues with the Goods and Services Tax. Excise administration and collection is undertaken by the Revenue and Assurance function that reports to the Head of Operations within the Customs Service. Revenue and Assurance works closely with the other operational and corporate functions of the Customs Service.

4.2 Point of application of excise taxation

The excise liability arises upon manufacture for all excisable products. No provision exists for manufacturers to set up distribution warehouses that further delay the payment of excise duty. Once excisable products have been removed for home consumption from a licensed customs controlled area, excise duty becomes due and payable.

Excisable goods consist of alcohol products (beer, wine, spirits including ethyl alcohol, and some food preparations containing alcohol), tobacco products, and motor vehicle fuels. Manufacture in the context of the production of excisable goods means:

- If the goods are tobacco, the process of cutting, pressing, grinding, crushing, or rubbing raw or leaf tobacco, or otherwise preparing raw or leaf tobacco or manufactured or partially manufactured tobacco, and of making cigarettes, and of putting up for use or consumption scraps, waste, chippings, stems, or deposits of tobacco resulting from processing tobacco.
- If the goods are a fuel, any operation, or process in the production of the goods. Any blending of fuels that increase fuel volumes constitutes manufacture. The processing of slop mixtures is also deemed to be manufacture, as it increases fuel volumes
- If the goods are neither tobacco nor a fuel, any operation, or process, involved in the production of the goods, and any ancillary process that takes place on premises that are not licensed or required to be licensed. The term ancillary process means one or more of the following processes –
 - Filtering, diluting or blending the goods with other goods (whether the other goods are similar to or different from the goods).
 - Putting the goods for the first time into a container (for example, a bag, barrel, bottle, can, cask, drum or keg) in which it might be presented, or from which it might be dispensed, for sale to any member of the public.
 - Labelling or marking for the first time containers filled with the goods.
- Compressed natural gas (CNG) is deemed to be manufactured for excise purposes by the licensee of a manufacturing area when the gas is supplied by the licensee to a CNG facility and compressed for use as a motor vehicle fuel.
- Excisable goods that are manufactured by contractors are deemed to have been manufactured by the contractor and not the relevant contracting licensee of the manufacturing area.

4.3 Accounting of excise liability and acquittal

4.3.1 Registration and licensing

Only licensed customs controlled areas may be used for the manufacture of excisable goods, the keeping of imported or excisable goods without payment of duty pending export, the temporary holding of imported goods for examination, the processing of persons entering or exiting New Zealand, the storage of wine by the manufacturer or first owner of the wine that cannot be accommodated within the manufacturing area, and the storage of imported or excisable goods without payment of duty pending duty-free sale.

Excisable goods must be manufactured in a licensed customs controlled area unless exempted. Manufacturing areas include, but are not limited to wineries, fuel producers of motor spirits, bio fuels, compressed natural gas and liquid petroleum gas, spirit makers and distilleries, breweries, tobacco manufacturers, denaturers of ethyl alcohol, and ancillary services for contract bottling and packaging. Each such customs controlled area licence comes with a Customs Service procedure statement that expounds the details of the terms and any conditions of that licence.

A diagrammatic descriptive plan of the warehousing area must accompany every customs controlled area application and secured, fenced yards may be required. Copies of the Certificate of Incorporation of the Company, photo ID of each company director, partner, trustee or sole trader and a motivation for the licence application must be provided. Customs Service staff will visit the premises intended to be licensed to inspect its overall security and suitability for the intended function.

Exemptions to customs controlled area licensing are provided for the manufacture of tobacco, beer, wine, spirits, biofuels or biofuel blends exclusively for own personal use and not for sale or other disposition to any other person. Where excisable goods are manufactured in an unlicensed area, excise taxation applies as if the area was licensed as a manufacturing area, except where an exemption applies.

4.3.2 Warehousing requirements

Excisable goods are deemed to be removed for home consumption when they are physically removed from a customs controlled area, except where they are temporarily removed or moved to another controlled area as approved by the Customs Service. Examples include temporary relocations to address storage space constraints and the use of the finished product in further manufacture.

Excisable or excise-equivalent goods may be supplied to diplomats without payment of duty from a manufacturing area, export warehouse or duty-free shop. Excise and excise-equivalent duties may also be suspended, remitted, refunded or exempted for goods manufactured or imported solely for use by approved international organisations or temporary residents serving these bodies.

Excisable goods must be entered for export within 15 working days from the end of the calendar month in which they were removed from the customs controlled area. The main documents that are typically required are a bill of lading for sea cargo, house bills for consolidated container shipments, waybills for air cargo, wine export

certification for wine made solely from New Zealand grapes, and proof that ship stores were received on board.

If excisable goods entered for export are not shipped and are returned to the customs controlled area, an entry is not required to re-enter them. However, the licensee must adjust the stock register to show the goods have been returned. The licensee must keep the export entry in the accounting system and endorse it as “goods not exported”. A cross-reference from the accounting system must be made to the corresponding item in the stock register.

The removal for home consumption of goods from an export warehouse or duty-free shop is subject to the approval of the Customs Service. Goods that have been held in the licensed area for two years or more, are of a perishable nature, have damaged packaging, are of a brand no longer stocked or have become difficult to sell may not be entered for home consumption. For imported and excise-equivalent goods, the value to be entered for home consumption is the value of importation.

4.3.3 Accounting and payment

Prescribed securities may be required for payment of duty. These may include a bond with or without sureties, a guarantee, written undertaking, cash deposit or any combination thereof. Securities need to be approved by the Customs Service and are typically applicable to all new manufacturing or off-site storage areas at an amount equivalent to the projected duty liability over 3 months for monthly returns, 6 months for biannual returns or 12 months for annual returns. The need to maintain the security is reviewed after 12 months.

Where excise duty is not paid by the due date, additional duty is imposed at 5 per cent of the unpaid duty and an additional 2 per cent of the unpaid duty (including additional charges) one month after the due date and each succeeding month. If the client has a reasonable explanation for the late payment and no other late payment of excise debt is made, the Customs Service may remit the additional duty with a warning. Where excise licensees are consistently late in payment or the submission of accounting information, the risk level of the licensee comes into question and additional security may be demanded.

Excise entries are subject to an administrative penalty regime where errors or omissions result in an amount of duty payable not being paid or declared for payment. The penalty amount is the greater of NZ\$200 or a maximum of NZ\$50 000 that is equal to 20 per cent of the duty unpaid or undeclared if the client did not take reasonable care, 40 per cent if the client was grossly reckless and 10 per cent if the error or omission was made knowingly. If the error or omission has resulted in the entry being materially incorrect, the penalty amount is applied to each entry.

4.3.4 Treatment of regional customs unions

No regional customs union exists, which means all import and export movements of excisable goods in the region are treated similarly to ordinary imports and exports.

4.4 Payment terms for respective excise products

4.4.1 Basis of current payment periods

All excisable goods must upon removal from a customs controlled area be entered manually or electronically. Except for the goods mentioned below, the excise duty liability of any other goods is payable immediately on removal from the customs controlled area. Personal effects accompanying a person arriving in New Zealand are similarly payable immediately upon entry.

Manufactured goods other than specified alcoholic products must be entered within 15 working days from the end of the month in which the goods are removed from a manufacturing area. The excise duty liability is payable at the same time. Specified alcoholic products that are removed from a manufacturing area or any other customs controlled area must be entered and the excise duty liability paid by the last working day of the month following the month in which those products were removed.

Smaller producers of specified alcoholic products, ethanol or petrol blends, biofuels and biofuel blends have a special dispensation whereby excise returns and payments may be submitted on either an annual or six-monthly basis as follows –

- Specified alcoholic products must be entered by the 15th working day of July for the previous year commencing on 1 July where the total annual excise duty liability is estimated by the licensee to be less than NZ\$50 000. The excise duty liability is payable by the last working day of July. Where such annual excise duty liability is estimated to be more than NZ\$50 000 and less than NZ\$100 000, the specified alcoholic products must be entered by the 15th working day of January for the period 1 July to 31 December and by the 15th working day of July for the period 1 January to 30 June. The excise duty liability is payable by the last working days of January and July respectively.
- Ethanol or petrol blends, as well as biofuels and biofuel blends must be entered by the 15th working day of July for the previous year commencing on 1 July where the total annual excise duty liability is estimated by the licensee to be less than NZ\$5000 or NZ\$30 respectively. The excise liability is payable by the last working day of July. Where such annual excise duty liability is estimated to be more than NZ\$5000 and less than NZ\$10000 or more than NZ\$30 and less than NZ\$60 respectively, these goods must be entered by the 15th working day of January for the period 1 July to 31 December and by the 15th working day of July for the period 1 January to 30 June. The excise duty liability is payable by the last working days of January and July respectively.

4.4.2 Appropriateness of current payment terms

Overall, the excise account filing and payment systems are functioning well and meets the objectives of the Customs Service to collect the appropriate amount of excise duty revenue efficiently and effectively. The special extended payment periods to assist small and medium sized alcohol, fuel and fuel blending manufacturers are effective in reducing the excise compliance burden for these

businesses. However, the more infrequent the account and payment periods are, the longer these taxpayers take to become familiar with the excise requirements.

4.5 Movements of excisable goods

4.5.1 Handling of non-duty paid product

Excise duty is payable on goods consumed or lost before removal from a customs controlled area in the same manner as if the goods had been removed on the date they had been consumed or lost. However, no liability for duty arises where excisable products manufactured within a licenced manufacturing area are used in an authorised manufacturing process carried on in that manufacturing area. If alcohol is used in the manufacturing process and the volume delivered is less than the volume used in manufacture, the full excise duty on the deficiency must be paid immediately. However, actual losses in production may be written off up to a maximum variance of 2 per cent.

The Customs Service sets the frequency at which licensees of customs controlled areas licensed as a manufacturing area, off-site storage area or export warehouse must undertake stocktakes. Any losses are to be accounted for, investigated and resolved. The licensee may not alter the stock database until the losses have been accounted for to the Customs Service, either by duty remission or payment of duty. The licensee may apply for a remission of duty where the loss was not caused by a wilful act or negligence. Credits are not granted lightly, as licensees are liable in principle for duty on goods wrongfully removed or lost as if the goods have been imported or manufactured by the licensee and entered.

4.5.2 Transfers of non-duty paid product

The Customs Service may approve the removal of excisable goods from a controlled area with an exemption from entry for home consumption. However, both the sending and receiving customs controlled areas must record such a transfer in their records and any operational or procedural requirements determined by the Customs Service must be adhered to. This exemption does not apply to customs controlled areas where the licence is subject to any condition or restriction.

The licensees' records must include a register detailing all goods subject to Customs control that have been removed from or delivered to their controlled area. The minimum details that must be reflected are the name and place of the controlled area the excisable goods are removed from and to, the date the goods were removed from and received into the controlled area, a description of the goods and the quantity, as well as the stock detail and job number with home consumption details. An obligation is placed on both the sender and receiver of the goods to obtain the required information from one another within a prescribed time period.

Certain products like ethyl alcohol or alcoholic beverages used in the manufacture of approved products may also be transferred duty-free upon permission granted by the Customs Service in the form of a permit. Provision exists for three types of permits that need to be renewed annually –

- The Permit to Receive and Use allows end-users to receive duty-free undenatured ethyl alcohol of an alcoholic strength by volume 80 per cent or higher or alcoholic beverages for use in the manufacture of approved products.
- The Permit to Receive and On-Supply allows entities that supply end-users to source and supply duty-free undenatured ethyl alcohol of an alcoholic strength by volume 80 per cent or higher.
- The Permit to Claim Concession allows importers to supply valid permit holders duty free undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent or higher and denatured alcohol of any strength.

4.5.3 Returns of duty-paid product

The excise system only permits a refund of excise duty after goods have been released for home consumption when those goods are found to be of faulty manufacture. Refunds of excise duties are not available on unsold stock that had been released for home consumption by a manufacturer, as the excise tax is raised upon manufacture and not the subsequent sale of released goods. A refund can be requested as a duty drawback if a manufacturer exports any unsold stock that was released duty-paid for home consumption.

Licensed manufacturers may request a remission of excise duty on domestically manufactured faulty products that are withdrawn from the market. Drawbacks of the applicable excise duties may also be requested when locally manufactured excisable goods are exported subsequent to their release into the domestic market. Care is taken that duty remissions are not granted for market returns of goods that are consequently reimported for destruction by licensed manufacturers who received duty drawbacks on these goods upon the earlier export thereof.

4.6 Combating illicit trade

The Trade Assurance Unit within the Revenue and Assurance Group of the Customs Service is responsible for providing assurance over the robustness of some NZ\$4 billion annual excise revenue collections. The enforcement strategy and audit selection of Trade Assurance relies on a blend of risk-based and High End Trader sectoral trader measures.

The annual 400 complex audits and up to 20 000 entry verification checks inform the risk audit matrix and considerable quality assurance requirements. Any high risk activities that result in assessments exceeding NZ\$100 000 are independently verified before issuance. The Customs Intelligence Unit provides feedback information vital to maintain an accurate risk and prioritisation matrix for enforcement interventions.

The fuel sector is considered to be the excise industry with the highest potential risk for losses of excise duty. Of the NZ\$104 million that the Trade Assurance Unit collected additionally in 2015, NZ\$75 million was recovered from the fuel industry. The widespread practice of the fuel industry was uncovered to not accurately reflect secondary blending manufacture of non-tax paid fuel such as jet fuel and diesel with tax paid fuels such as motor spirit found in slops and interface.

The Customs Service (usually together with the New Zealand Police) carries out controlled deliveries of drugs and precursor substances when these have been detected on importation. A controlled delivery could involve replacing or leaving a controlled drug in its

package and then permitting the parcel to reach its destination in order to identify the true importer. The Customs Service is exploring the inclusion of imported high-risk excisable goods in its controlled delivery enforcement network, specifically large tobacco smuggling.

4.7 Other reform considerations

4.7.1 Timing of Budget excise adjustments

There is no set policy for the effective time of implementation of new excise duties or increases in existing rates that arise from the annual Budget. The timing depends on the nature of the excise product, the reasons for the amendment and the objectives of government.

Excise duties on alcohol and tobacco are adjusted annually for inflation based on the consumer price index (CPI). As these annual increases maintain the real tax incidence of the duties, no additional budgetary excise duty adjustments have taken effect at the time of the Budget in recent years.

Recent Budget excise announcements that came into effect at a later time include four annual 10 per cent increases in excise duties on tobacco that coincided with the annual CPI adjustment. A further four annual 10 per cent duty increases on tobacco was announced in the 2016 Budget to coincide with the annual CPI adjustment, the first increase will take effect in 2017.

4.7.2 Excise legal tax design

Excise guidance is provided through policy guides and fact sheets that are posted on the website of the Customs Service. These documents are external to the excise tax legislative framework and therefore without legal status.

The excise legal framework is not explicitly based on international benchmarking, as there are no international harmonised policies and procedures specifically for excise in the World Customs Organisation's Kyoto Convention. Some of New Zealand's best practice for refunds, remissions and drawbacks of excise duty are based, though, on generic procedures under the Revised Kyoto Convention obligations.

5. Comparing the selected country experience with South Africa

The country experience summarised above accounts for three major geographical areas globally that are sufficiently representative of international DAS practice. Zimbabwe as South Africa's immediate neighbour to the north provides a very useful overview of the African experience with DAS administration. Finland, Belgium and the United Kingdom are appropriately diverse member states of the European Union to represent the range of DAS experience on the European continent and within a territorial common customs and excise market. New Zealand is arguably one of the most representative country examples of the DAS experience in the Asia-Pacific region to consider in view of the internationally recognised practice followed in its indirect tax design.

These countries are representative within their geographical areas and are appropriately comparable in the design and application of their respective DAS administrations to serve as a valuable point of reference for the review of South Africa's DAS policies and practices and the

identification of possible reform options. The United Kingdom and New Zealand have always served well for cross-country comparison with South Africa due to the historical similarities in tax design and administration. Zimbabwe, Finland and Belgium also provide a very interesting and useful additional counterpoint to the countries ordinarily identified for international comparison. In the absence of clear international trends, these representative examples of DAS administrations therefore offer adequate country-specific lessons for South Africa to consider.

A summary of some of the more pertinent lessons and affirmations for South Africa that arise from this cross-country comparison of the international experience with DAS is provided in CHAPTER VI – CONCLUSION AND WAY FORWARD to more specifically inform the excise review and rewrite.

CHAPTER VI – CONCLUSION AND WAY FORWARD

1. Key aspects of an excise administration system

It is apparent that the current DAS system of excise duty administration by SARS adequately meets the criteria expressed in international literature for an effective excise administration system. The operational components necessary for the creation of the excise liability, the offsetting of the excise liability on hand and the acquittal of the final excise liability are firmly in place.

Sophisticated refund, rebate and drawback mechanisms exist to ensure that the excise liability may be transferred and acquitted in a fair manner without unduly impacting on industry practices. Licensing and registration requirements, as well as recording, accounting and reporting obligations are also consistently applied as excise operational and enforcement measures to facilitate taxpayer compliance up to and including the ultimate payment and acquittal of excise liabilities.

2. The current duty-at-source regime

The implementation in 2002/03 of the DAS system resulted in a more efficient and streamlined excise administration with improved compliance, lower revenue risk, ease of enforcement and facilitation of legitimate trade. Bonded storage warehousing of local manufacturers was limited as far as possible and the enforcement focus was shifted from on-site supervision and monitoring to integrated audits throughout the value chain.

A fundamental decision was taken at the time of the conversion to DAS that the changeover should as far as possible be revenue neutral for SARS and cash neutral for affected industries compared to the previous sales-based excise regime. This led to special DAS licencing, accounting and payment dispensations for tobacco, beer, spirits, fuel, environmental levy and health promotion levy goods. DAS could not be fully applied at the time to wine and other fermented beverages that have maintained elements of the earlier sales-based administration. Diverse industry-specific deductions and allowances were also created to ensure the cash neutrality of affected industries after the conversion to DAS.

These industry-specific concessions were transitional measures meant to ease the conversion to DAS at the time and are not part of the core principles underpinning the fundamental design of the DAS excise administration system. Such discriminatory industry-specific measures cause unnecessary systemic complexities and inefficiencies that increase the compliance and enforcement burdens for both industry and SARS. Hence, SARS indicated at the time DAS was implemented that these interim industry-specific measures would be reviewed as DAS develops.

3. Strengthening the current DAS system

The compliance experience of industries of excisable goods and the administrative experience of SARS in its operational application and enforcement of DAS over the past sixteen years have highlighted certain improvements that may strengthen the current DAS system.

The ***institutional location of the excise component*** in SARS depends on the most appropriate level of integration and cooperation of the excise tax administration function with related functional areas

both within the revenue authority and the broader public sector. The views of stakeholders are invited to inform this debate.

The **point of application of excise taxation** under DAS is as close as possible to the point of domestic manufacture when goods achieve their excisable character. In practice, this is deemed to be the most administratively feasible point for each specific industry. The wine and other fermented beverages (excluding beer) industries with its various interlinked sub-industries were considered too exceptionally complex to be fully accommodated under DAS in 2002. However, these excise industries have advanced significantly and the accumulated DAS compliance and enforcement experience should be used to again explore the full application of DAS principles across all industries. The current *ad valorem* excise administration should also be reviewed and the underlying legal provisions clarified, particularly in respect of the manufacturing processes included in the *ad valorem* dutiable value determination and the allowed deductions from the invoice price.

The **accounting of excise liability and acquittal** thereof under DAS begins with the registration and licensing of persons responsible for the production, use or storage of excisable goods, which in turn is based on the type of warehousing activities such a person will undertake. The following proposals should be considered for their appropriateness and potential impact on industry and SARS:

- Distinct criteria, processes and requirements should be developed for registration and licensing respectively. Registration should provide adequate information and monitoring of potential taxpayers, while licensing should be restricted to persons liable for the payment of excise duties.
- The consolidation of manufacturing warehouse licenses should be explored for manufacturers of related excisable products within similar industries. The feasibility of single licensing for alcoholic beverages should be examined and unnecessary duplication avoided.
- The streamlining and simplification of the current multiple accounting and payment systems should be considered along with efforts to reduce the compounded licensing requirements.
- The current excise duty treatment of SACU removals as part of domestic consumption should cease and be aligned with the approach of the new customs duty dispensation that treats all movements of goods into the country as imports and those leaving the country as exports.

The differential **payment terms for respective excise products** that are based on industry-specific operating cycles should be systematically reviewed for their appropriateness and effectiveness in achieving equitable payment periods for the respective industries. It is proposed that SARS consistently and uniformly apply the following principles in its review:

- The payment periods for all excise clients should as far as possible follow similar payment cycles, for example 30, 60 or 90 days.
- One payment should be effected per excise account, with no split-payments allowed for the settlement of excise liabilities arising from a single accounting period.
- The cash-flow of neither SARS nor industry should as far as possible be negatively affected, taking into account that the once-off impact of an adjustment in payment terms would be offset by regular excise payments received in the longer term.

In order to determine and finalise changes to the current payment terms, SARS would extensively consult with representative industry bodies and respective licensees where necessary. For purposes of discussion only and to facilitate these stakeholder engagements, the following periods are suggested purely as a way forward towards developing consistent payment terms:

- Tobacco products – 30 (maximum 60) days.

- Beer – 30 (maximum 60) days.
- Unblended spirits – 30 days.
- Blended spirits – 30 (maximum 90) days, keeping in mind the time-consuming processing activities required after initial production.
- Fuel products – 30 (maximum 60) days.
- Environmental levy goods – 30 days.
- Health promotion levy goods – 30 days.
- *Ad valorem* excise goods – 30 days.
- Wine and other fermented beverages – 30 days throughout the year.

The various ***movements of excisable goods*** and the resultant legal provisions available to industry to offset, transfer and acquit the excise duty liability without unduly affecting standard industry practices warrant further investigation. It is proposed that SARS, in consultation with affected excise industries, systematically review the current industry-specific percentage fixed loss allowances of section 75, as well as the rebate and refund provisions of Schedule No.6 to the 1964 Act for their continued appropriateness in preventing unnecessary income losses and possible double taxation of excisable goods.

SARS' enforcement measures in ***combating illicit trade*** in excisable goods rely heavily on risk-profiling of taxpayers. As such, the risk factors that SARS considers are critical in determining the need for physical audit and verification checks of identified excise transactions and taxpayers. The development of single view profiling of taxpayers and the roll-out of integrated audits across all the various tax types that SARS administers would assist greatly in this respect.

The following additional interventions may compliment current risk profiling and enforcement:

- An accreditation system may encourage compliance by excise taxpayers, linked and harmonised with a corresponding customs system of accreditation for importers and exporters.
- A comprehensive database to compare specific excise taxpayers against industry averages in yields, losses, stocks, sales, payment periods, etc. may inform illicit trade interventions.
- The apparent stockpiling by certain manufacturers of excisable goods ahead of anticipated duty rate increases require investigation for redress in suitable anti-forestalling measures.
- Up to date fiscal marker, tracking and tracing measures should be explored to combat illicit excisable goods and to meet South Africa's international treaty obligations.
- SARS' physical audit and verification capacity should be preserved and strengthened as the ultimate enforcement intervention against the illicit trade in excisable goods.

The implications of the ***timing of Budget excise adjustments*** should be investigated and the effect of applying duty rate increases at a designated future date and time be compared to the current practice of immediately applying the rates increases at Budget time. Options could include applying the rates increases from 1 April with the start of the fiscal year, or timing the rates increases to correspond with the excise accounting and payment periods of the particular excisable goods. Such an adjustment in the effective date would need to be coupled with suitable anti-forestalling measures.

The current ***excise legal tax design*** framework comprises the primary and secondary legislation, complimented by internal and external excise tax guides and standard operating procedures that have no legal status. As these supplementary policy documents direct enforcement and compliance efforts, their content and status should be reviewed.

4. International experience with DAS

An overview of country experiences with applying the DAS principles of excise duty collection and administration unfortunately does not demonstrate distinct patterns of international best practice. However, several interesting examples of possible policy reform options for South Africa and affirmations of current DAS practices by SARS do appear from the cross-country comparison.

The ***institutional location of the excise component*** in most of the countries surveyed resides with the customs service in a separate government agency apart from the inland revenue department. Interestingly, the UK incorporates its customs and excise functions in an Indirect Tax Directorate within the Business Tax Division. This certainly seems sensible considering the close linkages between the customs and excise and VAT functions and administrations.

The ***point of application of excise taxation*** under DAS is internationally as close as possible to the point of domestic manufacture when goods achieve their excisable character. The manufacture of excisable goods in this context is defined broadly in the countries surveyed and may deviate slightly between industries. The New Zealand treatment of circumscribing the industry-specific point of manufacture where excisable goods are considered to achieve their excisable character and attract their excise duty liability is particularly useful and could be further examined for possible local application. For example, such industry-specific definitions of manufacture would assist greatly in clarifying the manufacturing processes included in *ad valorem* excise duty determination.

The ***accounting of excise liability and acquittal*** thereof in all of the countries surveyed relies on the licensing of persons responsible for the production, use or storage of excisable goods. SARS currently only allows the duty-suspended storage in licensed warehouses of excisable goods that are destined for consumption outside South Africa. By contrast, all of the countries surveyed permit limited duty-suspended storage of certain excisable goods destined for home consumption. This occurs in licensed storage warehouses under specific conditions particular to certain allowed industries. For example, New Zealand allows temporary relocations of excise goods to address storage space constraints. The implications of authorising such limited additional industry-specific storage options locally could be further investigated, keeping in mind the possible impact on the fiscus.

The ***payment terms for respective excise products*** in the country comparison are largely similar for most excisable industries and do not reflect the operating cycles of particular excise goods. The only exceptional payment terms are in the energy sector and for small producers. In Belgium, the excise payment terms of gas and electricity distributors correlate with their billing system. Finland allows smaller producers to submit accounts and payments less frequently up to once a year. The UK allows smaller biofuels producers to account for and pay duty quarterly. New Zealand has a special dispensation for smaller producers of specified alcoholic products, ethanol or petrol blends, biofuels and biofuel blends to submit excise returns and payments either six-monthly or annually. It is recommended that similar payment terms across excisable industries also be explored locally.

The provisions for excisable industries to offset, transfer and acquit their excise duty liability due to ***movements of excisable goods*** differ between the countries compared. Zimbabwe permits fixed loss allowances for the production and storage of only alcoholic beverages. Belgium and the UK allow tolerances for production losses only in the oil industry. Finland and New Zealand only permit case-specific actual production losses. Finland caps actual production losses at a specific producer's individual margins of error, while New Zealand allows a maximum variance of 2 per cent. Transfers of non-duty paid and returns of duty-paid excise products are treated consistently between these countries and in accordance with SARS practice. It is recommended that local loss allowances be examined for their relevance compared to actual losses suffered by affected excise industries.

In ***combating illicit trade*** in excisable goods, all the countries surveyed employ single view risk profiling across the various tax types for manufacturers of excisable goods. All the comparison countries utilise fiscal marking as an excise enforcement measure. Zimbabwe is undertaking feasibility studies for tracking and tracing options, while the UK will implement its track and trace system in 2019. Stockpiling levels in Zimbabwe are not considered significant, but both Belgium and the UK apply anti-forestalling measures for tobacco products several months ahead of the annual budget. All the comparison countries consider the tobacco and oil industries as particularly risky for excise duty evasion and have specific anti-illicit measures in place in these sectors. SARS could similarly enhance its single view risk profiling and integrated audit enforcement. Budget 2018 announced the intention to create local anti-forestalling measures that would need to be informed through the monitoring of domestic industry stockpiling over time.

There is no set pattern in the ***timing of Budget excise adjustments*** in the countries surveyed. The timing of the excise duty rate adjustment depends on the nature of the excise product, the reasons for the amendment and the objectives of government. However, comparison countries appear to implement most excise adjustments subsequently and not at the time of the Budget. South Africa could explore similarly applying local excise adjustments at a designated future date and time, coupled with suitable anti-forestalling measures.

The ***excise legal tax design*** framework of European countries is based on EU legal directives and country-specific procedures are interpreted in EU administrative comment. Zimbabwe and New Zealand as the non-EU countries surveyed both have policy and procedure guides that are external to the excise legislation and that act as interpretation notes to direct enforcement by the revenue authority and compliance by excise industries. South Africa could examine the content and status of its own supplementary policy documents in this respect.

5. Way forward

The publication of this discussion document aims to elicit constructive inputs and comments from all affected industries and sectors that manufacture, use, import and export excisable goods, as well as all broader excise stakeholders. The active involvement from excise role players is essential to enable the successful development and implementation of the envisaged Excise Duty Act. SARS trusts that excise stakeholders will utilise this valuable opportunity to engage pro-actively around the proposals and recommendations put forward in this paper for the review of the excise duty system as the process to rewrite the excise legislation continues.

Stakeholders are invited to forward their inputs and comments for the attention of Ms Samantha Authar, either electronically to [C&E legislativecomments@sars.gov.za](mailto:C&E_legislativecomments@sars.gov.za), or manually to South African Revenue Service, Private Bag X923, Pretoria, 0001. Should there be any uncertainty regarding the comments received, SARS may subsequently contact such stakeholders directly for follow-up clarification. Upon completion of the public comment period and once the comments received have been processed, SARS intends to approach representative industry bodies and responsible government departments for face-to face engagements on those particular reform proposals that require further industry and sector specific refinement.