

SARS awaits comments on changes to deferment scheme

By [Virusha Subban](#)

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Currently, if an importer applied for and is accepted into the SARS deferment scheme, the payment of import duty and import VAT may be deferred or suspended for up to 30 days.



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At the end of the 30 day period the importer is allowed a further seven days within which to pay the deferred import duty and VAT to SARS. Currently, the 30 day deferment cycle may commence on any day of the month beginning with the 1st up to the 28th day of the month.

There should be a pre-approved deferment limit in place which limits the amount of duty and VAT that may be deferred for the deferment cycle. If that amount is exceeded the importer will not be able to defer more import duty and VAT for the rest of that cycle. Importers should be requested to provide security to SARS up to the value of the deferment limit and the amount of security requested depends on the risk profile of the applicant.

SARS may allow the deferment of payment of duties subject to certain conditions and for such periods as it may determine. This is in terms of section 39(1) of the Customs and Excise Act, No. 91 of 1964. This deferment also applies to import VAT levied in terms of section 13(6) of the Value-Added tax Act No. 89 of 1991.

Concerns raised

The deferment scheme leads to some complications with regard to the claiming of an input tax deduction on the VAT paid on imported goods. Tax practitioners have raised concerns about the practical implications of the deferment scheme with SARS, particularly the implications raised by the recent amendments to section 16(3)(a)(iii) of the VAT Act which deals with the claiming of input tax deductions.

Before amendment of this section last year, a vendor could deduct the VAT payable on the importation of goods at the earlier of the invoice date (generally the bill of entry date) or payment date, provided the agent was in possession of proof

of payment of the VAT to SARS.

This section was amended by the Taxation Laws Amendment Act No. 31 of 2013 (first amendment) with effect from 1 April 2014 to provide that a vendor is required to deduct the VAT payable on the importation of goods in respect of which tax period payment was made to SARS. The requirement for a taxpayer to have a tax invoice prior to claiming an input tax credit was therefore removed.

A second amendment to section 16 was introduced by the Taxation Laws Amendment Act No. 43 of 2014 (second amendment) on 20 January 2015 to provide that an input tax deduction will be allowed to be made in respect of import VAT charged in respect of goods imported by the vendor and released in terms of the Customs and Excise Act.

Negative cash flow

The reason provided by SARS for the second amendment is that the first amendment resulted in the input tax claim being potentially delayed by one or two months until the vendor has paid the import VAT in full and that this resulted in a negative cash flow implication for the importer. SARS proposed that the requirement for payment to occur before the input tax deduction may be claimed be deleted and replaced with the requirement that the importer proves that Customs has released the goods in terms of the Customs and Excise Act, i.e. in practice the issue of a Customs Release Notification.

The reason for including the requirement of release by Customs is to prevent the deduction of input tax in instances where the bill of entry is passed through Customs prior to the goods arriving in South Africa. This could occur in instances where the importer pre-clears the goods, pays the import taxes and would effectively be able to make a premature deduction of input tax before the goods arrive in South Africa. The second amendment will come into operation on 1 April 2015.

SARS is also proposing to amend the deferment period by amending the Rules of the Customs and Excise Act to align it to the VAT period. On 6 February 2015 SARS issued a notification to the effect that they intend standardising all deferment accounts to calendar months with payment always due on the 7th of the subsequent month, i.e. all deferment periods will consist of calendar months and the amounts must be settled on or before the 7th of the subsequent calendar month.

'One payment' date

Currently importers or clearing agents may elect their own deferment settlement dates but going forward this choice will fall away.

Having discussed the proposed changes with a number of industry players, their concerns lie with the calendar month deferment and essentially 'one payment' date for all. The reaction from business is that the impact on the cash flow will be significant and not sustainable and that SARS must consult widely with industry as a whole prior to drafting the Rules in this regard. There are also questions around what the status would be of the current DA 650 application for deferment forms that were completed and approved and whether new applications need to be submitted to Customs.

Draft Rules will be released for comment in due course and the proposed implementation date is said to be 1 July 2015.

For now SARS has requested comments to the proposed changes to the deferment scheme on or before 27 February 2015. It is advisable for business to submit comments to SARS and to stipulate the practical problems that could result from the proposed changes to the deferment scheme, and to perhaps also suggest solutions that would work for business.

ABOUT THE AUTHOR

Virusha Subban is a partner at Bowman Gilfillan Africa Group.