

No. R. 478

1 June 2007

**RULES [PROMULGATED UNDER SECTION 77I OF THE
CUSTOMS AND EXCISE ACT, 1964 (ACT NO. 91 OF 1964),
PRESCRIBING THE PROCEDURES TO BE FOLLOWED FOR
ALTERNATIVE DISPUTE RESOLUTION] MADE BY THE MINISTER OF FINANCE
UNDER SECTION 77I OF THE ACT**

By virtue of the power vested in me by section 77I of the Customs and Excise Act, 1964 (Act No. 91 of 1964), I, Trevor Andrew Manuel, Minister of Finance, hereby, after consultation with the Minister for Justice and Constitutional Development, make rules as set out in the Schedule hereto, prescribing the procedures to be followed for alternative dispute resolution.

These rules apply **with effect from 4 June 2007** in respect of all final decisions made under Part A of Chapter XA of the Customs and Excise Act, 1964, on or after that date.

T.A. MANUEL, MP
MINISTER OF FINANCE

SCHEDULE

(a) By the insertion of the following rules after the rules for Part A of Chapter XA:

“PART B: ALTERNATIVE DISPUTE RESOLUTION

RULES FOR SECTION 77I OF THE ACT

Definitions

77I.01 In these rules, any meaning ascribed to any word or expression in the Act, shall bear the meaning so ascribed and, unless the context otherwise indicates -

“aggrieved person” - means any person who makes use of the dispute resolution procedures provided for in these rules and includes any duly authorised representative of such person;

“deliver” means -

- (a) handing the relevant document to the relevant person;
- (b) sending the relevant document to the relevant person by registered post;
- (c) telefaxing the relevant document to the relevant person; or

(d) transmitting the relevant document to the relevant person by electronic means:

Provided that in the case of paragraphs (c) and (d), the original, signed document must be handed to that person or sent by registered post to that person within ten days after it being so telefaxed or transmitted by electronic means;

“documents” includes documents as contemplated in section 101 of the Act;

“the Act” means the Customs and Excise Act, 1964.

Application for alternative dispute resolution after internal administrative appeal

- 77L02 Any person who is dissatisfied with a decision contemplated in section 77B(2) of the Act may apply for alternative dispute resolution.
- 77L03 An application for alternative dispute resolution must be submitted to the Commissioner or to the chairperson of an appeal committee, as applicable, on form DA 52 and must, unless the Commissioner agrees to extend the period, be delivered within 30 days from the date of the notice informing the appellant in an internal administrative appeal of the decision of the Commissioner or the appeal committee.
- 77L04 The Commissioner must, within 20 days of receipt of an application for alternative dispute resolution, inform the applicant by notice whether the matter is appropriate for alternative dispute resolution and may be resolved by way of the procedures contemplated in these rules.

Alternative dispute resolution as an alternative to judicial proceedings

- 77L05 Where a person has delivered a notice to the Commissioner in terms of section 96(1) of the Act and the Commissioner is of the opinion that the matter is appropriate for alternative dispute resolution he or she must inform that person within ten days after the receipt of such notice.
- 77L06 (a) Where a person does not agree to alternative dispute resolution he or she must notify the Commissioner within 10 days after the date of the notice referred to in rule 77L05.
- (b) Where a person agrees to alternative dispute resolution he or she must deliver a duly completed form DA 52 to the Commissioner in the manner prescribed in the rules for section 96 of the Act, within ten days after the date of the notice by the Commissioner referred to in rule 77L05.
- 77L07 Where a duly completed form DA 52 is not delivered within ten days after the date of the notice by the Commissioner referred to in rule 77L05, the matter may not be dealt with under the procedures contemplated in these rules.

The terms governing the alternative dispute resolution

- 77L08 The terms governing the alternative dispute resolution proceedings are set out in Schedule A to these rules as reproduced on the reverse of form DA 52.

- 77L09 A person who applies for alternative dispute resolution on form DA 52 must accept in writing the terms governing alternative dispute resolution as set out in Schedule A to these rules by signing the declaration on the reverse side of the form before alternative dispute resolution may take place.

Period of dispute resolution

- 77L10 The alternative dispute resolution proceedings must commence within 20 days after the date of the notice by the Commissioner informing the applicant that the matter is appropriate for alternative dispute resolution as contemplated in rule 77L04 or receipt of an application form DA 52 by the Commissioner as contemplated in rule 77L06, as the case may be.
- 77L11 The alternative dispute resolution proceedings must, unless the Commissioner extends the period, end not later than 90 days after the date of the notice by the Commissioner informing the applicant that the matter is appropriate for alternative dispute resolution as contemplated in rule 77L04 or receipt of an application form DA 52 by the Commissioner as contemplated in rule 77L06.

The facilitator

- 77L12 (a) The Commissioner may appoint any person, including a person employed by SARS, to facilitate the alternative dispute resolution proceedings.
- (b) Any person so appointed to facilitate the proceedings will be bound to the code of ethics set out in Schedule B to these rules.
- 77L13 The person appointed to facilitate may, if the Commissioner and the aggrieved person agree thereto at the commencement of the proceedings, be requested to make a recommendation at the conclusion of the proceedings if no agreement or settlement as contemplated in rule 77L18 or 77L19 is ultimately reached between the parties, which recommendation will be admissible during any subsequent proceedings including court proceedings.

Proceedings

- 77L14 The alternative dispute resolution proceedings will be conducted in accordance with the terms set out in Schedule A to these rules.
- 77L15 During the alternative dispute resolution proceedings the aggrieved person -
- (a) may be accompanied by any representative of his or her choice; and
 - (b) must be personally present unless the facilitator, in exceptional circumstances, allows the aggrieved person to be represented in his or her absence by a duly authorized representative of his or her choice.

Reservation of rights

- 77L16 Subject to section 4 (3) of the Act and rule 77L13, the proceedings in terms of this rule shall not be one of record, and any representation made or document tendered in the course of the proceedings -
- (a) is made or tendered without prejudice; and
 - (b) may not be tendered in any subsequent proceedings as evidence by any other party, except -
 - (i) with the knowledge and consent of the party who made the representation or tendered the document during the proceedings in terms of this rule;

- (ii) where such representation or document is already known to, or in the possession of, that party; or
- (iii) where such representation or document is obtained by that party otherwise than in terms of the proceedings in terms of this rule.

77L17 No person may -

- (a) subject to the circumstances listed in paragraph (b)(i) to (iii) of rule 77L16, *subpoena* any person involved in the alternative dispute resolution proceedings in whatever capacity to compel disclosure of any representation made or document tendered in the course of the proceedings; or
- (b) *subpoena* the facilitator of the alternative dispute resolution proceedings to compel disclosure of any representation made or document tendered in the course of the proceedings.

Agreement or settlement

77L18 A dispute which is subject to the procedures in terms of this rule may be resolved by agreement whereby either the Commissioner or the aggrieved person accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.

77L19 Where -

- (a) the Commissioner and an aggrieved person are, despite all reasonable efforts, unable to resolve the dispute as contemplated in rule 77L18; and
- (b) the Commissioner personally or any official delegated by the Commissioner in terms of section 77N of the Act, is of the opinion that the circumstances of the matter comply with the requirements contemplated in section 77M of the Act,

the parties may attempt to settle the matter in accordance with the provisions of Part C of Chapter XA of the Act.

77L20 Where an agreement contemplated in rule 77L18 or a settlement contemplated in rule 77L19 is concluded, the Commissioner must give effect to that agreement or settlement, as the case may be, and notify the aggrieved person thereof within a period of 60 days after the date of the conclusion thereof.

77L21 Where an agreement contemplated in rule 77L18 or a settlement contemplated in rule 77L19 can not be achieved, or where the proceedings are terminated in the manner provided for in paragraph 7(g) of Schedule A to the rules, the Commissioner must inform the aggrieved person of his or her further rights regarding the institution of judicial proceedings within 10 days of the conclusion or termination of such proceedings.

77L22 Any agreement or settlement reached through the alternative dispute resolution process has no binding effect in respect of any other matters relating to that aggrieved person not actually covered by the agreement or settlement, or any other person.

Reporting requirements

- 77L.23 Any -
- (a) agreement in terms of rule 77L18 whereby a dispute which is subject to the procedures in terms of this rule is resolved in whole or in part, must be reported internally in the manner as may be required by the Commissioner.
 - (b) settlement of a dispute in terms of rule 77L19 must be reported in accordance with the provisions of Part C of Chapter XA of the Act.

SCHEDULE A**THE TERMS OF ALTERNATIVE DISPUTE RESOLUTION ("ADR")****1. Main Rule**

ADR is only available if these terms are accepted. Both the Commissioner and the aggrieved person have to agree to the ADR process for any agreement or settlement to have any effect.

2. Who may initiate ADR?

ADR may be initiated by—

- (a) a person dissatisfied with a decision of the Commissioner or an appeal committee under the internal administrative appeal procedure contemplated in Part A of Chapter XA of the Act; or
- (b) the Commissioner subsequent to the receipt of a notice in terms of section 96(1) of the Act where he or she is of the opinion that the matter is appropriate for ADR.

3. ADR following the disallowance of an internal administrative appeal

- (a) A person who appealed against any decision of the Commissioner and whose appeal has been disallowed in whole or in part by the Commissioner or an appeal committee under the internal administrative appeal procedure contemplated in Part A of Chapter XA of the Act, may apply for ADR.
- (b) An application for alternative dispute resolution must, unless the Commissioner agrees to extend the period, be submitted to the Commissioner on form DA 52 within 30 days from the date of the notice informing the appellant that his or her appeal has been disallowed.
- (c) The Commissioner must, within 20 days of receipt of an application for alternative dispute resolution, inform the applicant by notice whether the matter is appropriate for alternative dispute resolution.

4. ADR as an alternative to judicial proceedings

Where a person has delivered a notice to the Commissioner in terms of section 96(1) of the Act and the Commissioner is of the opinion that the matter is appropriate for alternative dispute resolution he or she must inform that person within ten days of the receipt of such notice.

5. Acceptance of ADR

- (a) Where a person referred to in paragraph 4 does not agree to alternative dispute resolution he or she must notify the Commissioner within ten days from the date of the notice by the Commissioner.