<u>Draft rules under section 120(1)((mA) – liquidation of provisional payments</u>

For public comment

GENERAL EXPLANATORY NOTE:

[ ] Words that are between square brackets and in bold typeface, indicate deletions from the existing rules

______ Words that are underlined with a solid line, indicate insertions in the existing rules

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SOUTH AFRICAN REVENUE SERVICE

No. R. 2026

CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES

Under sections 76 and 120 of the Customs and Excise Act, 1964 (Act 91 of 1964), the rules published in Government Notice R.1874 of 8 December 1995, are herewith amended to the extent set out in the Schedule hereto **with effect from 30 April 2027**

NGOBANI JOHNSTONE MAKHUBU

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Insertion of rules

1. The following rules are hereby inserted after rule 120.12:

"<u>120.12A For the purposes of section 120(1)*(m*A*)* the rules numbered 120.12A followed by further digits relate, unless the context</u>

otherwise indicates, to various aspects regarding the return or liquidation of security lodged in the form of provisional payments

Part 1: Interpretation and applications for refunding of returnable amounts

Definitions

120.12A.01 For the purposes of these rules and any form or other document to which these rules relate, any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned and unless otherwise specified or the context otherwise indicates –

"compliance period", in relation to a provisional payment, means the period within which any conditions attached to a particular provisional payment must be complied with, and includes any extension period granted by the Commissioner;

"CUSRES message", in relation to the liquidation of a provisional payment, means an electronic message transmitted via EDI to the PP lodger to communicate required action in respect of a bill of entry;

"effective date" means the date determined by the Minister by Notice in the Government Gazette as the effective date for sections 20(1) and 22(1)*(c)* of the Tax Administration Amendment Act, 2023 (Act No. 18 of 2023), which is also the effective date of these rules;

"initiate", in relation to liquidation, means to take action to activate and finalise liquidation;

"liquidation", in relation to a provisional payment lodged as security, means the SARS verification and accounting process by which a provisional payment is finalised and whereby –

(a) the amount of the provisional payment is brought to account against any duty, tax or other money determined to be owed and payable to the Commissioner; or

(b) any returnable amount is repaid to the person who lodged the payment,

and **“liquidate”** has a corresponding meaning;

“PP lodger”, in relation to a provisional payment, means a person who lodged security in the form of a provisional payment;

“provisional payment” means a payment lodged with the Commissioner as security for the payment of duty, tax or other money that may become payable to the Commissioner;

“returnable amount” means the amount of a provisional payment to be repaid to the PP lodger where such amount had not been utilised or fully utilised for purposes of the payment of duty, tax or other money owed to the Commissioner; and

“these rules” means the rules numbered 120.12A.

Applications for repayment of security in the form of provisional payment as contemplated in section 76(2)*(eA)* and *(g)* and prescription period

120.12A.02 *(a)* (i) A PP lodger must, in order to have a returnable amount repaid in circumstances envisaged in section 76(2)*(e*A*)* or *(g)*, within two years of lodging the provisional payment, apply for such repayment in accordance with the requirements of section 76 read with rule 76.04.

(ii) An application referred to in subparagraph (i) may, depending on the circumstances, be submitted at any time within the two year period, after the conditions of the provisional payment had been complied with.

(b) If a PP lodger fails to submit an application in terms of paragraph *(a),* the returnable amount accrues to the National Revenue Fund in terms of rule 120.12A.05 and the Commissioner may initiate liquidation to effect such accrual in terms of that rule.

(c) This rule must be read with rule 120.12A.03.

Part 2: Circumstances for Commissioner-initiated liquidation of provisional payments, and for accrual to National Revenue Fund

Liquidation initiated by Commissioner where provisional payment conditions complied with or in other circumstances

120.12A.03 *(a)* Despite rule 120.12A.02, the Commissioner may, before expiry of the two year period referred to in rule 120.12A.02*(a)*, initiate liquidation of a provisional payment by preparing a voucher of correction refunding the returnable amount, provided that the conditions of the provisional payment had been complied with, or in other circumstances where the Commissioner deems it expedient to do so.

(b) Where the Commissioner has initiated liquidation in terms of paragraph *(a)*, a PP lodger is entitled to be notified of the liquidation by way of a CUSRES message.

Liquidation initiated by Commissioner where provisional payment conditions not complied with within compliance period

120.12A.04 *(a)* Where a PP lodger did not comply with the conditions of the relevant provisional payment within the compliance period, the PP lodger is entitled to be notified –

(i) by way of a CUSRES message of the failure to comply; and

(ii) of the Commissioner's intention to proceed with liquidation to bring the provisional payment amount to account as duty.

Circumstances where returnable amounts in respect of provisional payments accrue to National Revenue Fund

120.12A.05 *(a)* If a PP lodger who is entitled to a returnable amount does not submit an application in terms of rule 120.12A.02 within a period of two years after the lodging of the relevant provisional payment, the amount of the provisional payment accrues to the National Revenue Fund and the Commissioner may initiate liquidation to effect such accrual.

(b) The PP lodger is entitled to be notified that –

(i) the returnable amount accrues to the National Revenue Fund on expiry of the period; and

(ii) the Commissioner's intention to proceed with liquidation to effect the accrual by removing the provisional payment amount from the relevant voucher of correction.

Part 3: Implementation arrangements providing for treatment of provisional payments unliquidated at effective date

Provisional payments not yet two years unliquidated at the effective date

120.12A.06 Any provisional payment lodged before the effective date that is unliquidated for not yet two years since lodgement at the effective date, must, depending on the circumstances, be dealt with in accordance with rules 120.12A.02, 120.12A.03 or 120.12A.04.

Provisional payments remaining unliquidated for two years or more at effective date, where conditions were not complied with

120.12A.07 In circumstances where a provisional payment lodged before the effective date remains unliquidated at the effective date for two years or more since lodgement, and conditions were not complied with, the amount of the provisional payment accrues to the National Revenue Fund and the Commissioner may initiate liquidation to effect such accrual by removing the provisional payment amount from the relevant voucher of correction.

Provisional payments remaining unliquidated for two years or more at effective date, where conditions were complied with

120.12A.08 In circumstances where a provisional payment lodged before the effective date remains unliquidated at the effective date for two years or more~~,~~ since lodgement, and conditions were complied with–

(a) the Commissioner may initiate liquidation by sending a notification to the PP lodger by making use of the last known contact details reflected on SARS' licensing and registration system, indicating the intention to liquidate by means of a voucher of correction; and

(b) the PP lodger must indicate banking details for deposit of the returnable amount within seven calendar days of transmission of the notification, failing which the Commissioner may remove the provisional payment from the voucher of correction and effect the accrual to the National Revenue Fund.".