



DIESEL REFUND REFORM

Review of the administrative system

Industry workshops in October 2021

Meeting agenda

Key aspects to be covered

- Opening remarks
- Current diesel refund administration
- Process to review the administration
- Key aspects addressed by the review
- Proposals for administrative reform
- Envisaged way forward
- Open discussion
- Closure

Current diesel refund administration

- Section 75 of the Customs and Excise Act, 1964, (the Act) authorises refunds of the fuel levy and Road Accident Fund levy to diesel refund users registered under both the Act and the Value-Added Tax Act, 1991.
- Diesel refund users may claim refunds in respect of their eligible diesel purchases and qualifying use of such diesel in accordance with section 75 and Note 6 to Part 3 of Schedule No.6 to the Act.
- Diesel refunds may be claimed within two years from the date of purchase of the diesel, but all claims must be supported by the prescribed recordkeeping, e.g. purchase invoices, storage logbooks and usage logbooks.
- Registrations of diesel refund users and the submission of diesel refund claims are processed through the VAT system. Diesel refund payments are set off against the diesel refund user's VAT liability.
- The diesel refund administration is enforced by SARS's excise audit division. The penalties, dispute and appeal provisions of the Act apply, together with the VAT interest provisions, for the recovery of undue refunds.

Process to review the administration

- Budget 2015 outlined a threefold approach to diesel refund reform through interim amendments to address immediate challenges, delinking from the VAT system and a comprehensive review of the administration.
- Interim amendments under the current diesel refund design were implemented and preparatory legal amendments for the VAT split were effected in 2016.
- The National Treasury and SARS discussion paper *Review of the Diesel Fuel Tax Refund System* was published for public comment and stakeholder inputs were processed in 2017. The paper outlined the objectives of the review to:
 - Create a standalone diesel refund administration separate from VAT.
 - Provide certainty on persons who are to be included as diesel refund users, notably wet contractors and joint venture partnerships that purchase their diesel and conduct qualifying activities and therefore should be included.
 - Provide clarity on the definitions of primary production for the respective industries and the qualifying activities that are included within that scope.
 - Curtail abuse of the diesel refund scheme by tightening registration, profiling and recordkeeping requirements, while providing logbook templates and simplified alternative logbook options for advanced technologies.

Process to review the administration (continued)

- A series of general and industry-specific consultative workshops were conducted in 2018 and further technical inputs from stakeholders were processed in 2019 to further refine the reform proposals for the drafting of suitable legislation.
- First and second drafts of the diesel refund Rules to section 75 and Note 6 to Part 3 of Schedule No.6 to the Act were published for public comment. Stakeholder comments were processed in 2020 and 2021 and relevant inputs incorporated.
- Further public consultations were delayed due to the COVID-19 pandemic and lockdown restrictions. Virtual consultations to further refine the draft legislation were arranged with all stakeholders who commented for the affected industries in either 2020 or 2021 on the published legislation:
 - Fishing industry (15 October 2021);
 - Farming industry (19 October 2021);
 - Forestry industry (22 October 2021);
 - Mining industry (25 October 2021); and
 - Non-primary industries (29 October 2021).

Key aspects addressed by the review

Separate diesel refund administration

- The current shared VAT administration excludes intended beneficiaries that are not VAT vendors (e.g. smaller producers and certain joint ventures), creates enforcement complexities, and poses cash-flow challenges for users when their VAT refunds are suspended due to diesel refund audits.
- Section 75 of the Act was amended in Tax Administration Laws Amendment Act, 2017, with a future effective date that will be announced in order to facilitate a standalone diesel refund administration separate from the VAT system.
 - Upon implementation, the need for diesel refund users to also be registered for VAT purposes will fall away.
 - In the interim, smaller producers below the compulsory VAT registration threshold may choose to voluntarily register for VAT in order to also access the diesel refund scheme.
- The draft rules to section 75 of the Act create a new regulatory framework to provide for the registrations and electronic profiling of diesel refund users and submissions of returns under the separate diesel refund administration.
 - Upon implementation, existing diesel refund users who registered under the VAT system will need to re-register under the new Excise administration and create their electronic profiles.

Key aspects addressed by the review (continued)

Separate diesel refund administration (continued)

- In terms of section 76C of the Act, diesel refunds due to a user may be set off against any amount of tax, duty, levy, charge, interest or penalty owed by that user in respect of any law administered by SARS.
 - This will provide a cash-flow benefit similar to the current VAT set-off for any outstanding tax debts for which users may have needed financing.
 - This set off must first be applied in respect of outstanding amounts in terms of the Act before other tax types would be debt equalized.
- The timeline for the creation of the new standalone diesel refund administration will largely coincide with the holistic review of the diesel refund scheme and its implementation will therefore be aligned with that of the reform process.
 - The systems design and development that would be required for the new standalone diesel refund administration will be accompanied by timeous consultations with diesel refund users and stakeholders together with the necessary testing to ensure a smooth transition.

Key aspects addressed by the review (continued)

Outsourcing and shared authorisations

- Outsourcing of primary production commonly occurs to pool resources and share expertise. Yet users may currently claim diesel refunds only for dry contracting to the exclusion of wet contractors and certain joint venture operations.
- Diesel refunds in fishing and mining are restricted to the user's own primary production operations and subject to the possession by the user of the necessary authorisation. This excludes some intended beneficiaries where –
 - the joint venture partner in possession of the authorisation is not the partner performing the primary production operations;
 - the person in possession of the authorisation has outsourced the primary production operations to contractors; or
 - more than one person conducts primary production operations in respect of the same authorisation.
- The draft legislation allows wet contractors, partnerships, joint ventures, and unincorporated bodies of persons to register as diesel refund users.
 - More than one user may claim diesel refunds in respect of the same authorisation, provided the authorisation and diesel refund relationships between those mutual users are declared on their respective diesel refund user registration profiles.

Key aspects addressed by the review (continued)

Logbooks and recordkeeping obligations

- Logbooks and recordkeeping compliance is unacceptably low across all industries amid complaints that these requirements are too onerous and impractical.
- Storage and usage logbooks will remain key to diesel refund compliance. Industry-specific examples of acceptable standard and simplified logbook formats will be developed through consultation to reflect current needs and technologies.
- The draft legislation allows simplified usage logbooks where the –
 - fuel tank level of a specified class of asset cannot with reasonable certainty be gauged and the user agrees to consistently determine the volume of fuel used through the subsequent refilling of the asset, provided the fuel tank is always kept full at the start and refilled at the end of every use of such asset;
 - fuel tank level of a specified class of asset cannot with reasonable certainty be gauged to determine the monthly fuel use and the user agrees to consistently deem the closing balance at month end to be a full fuel tank; or
 - user consistently employs satellite tracking, proximity warning or similar technologies in respect of a specified class of asset in order to populate the proposed alternative logbook solution with entries of real time information confirming the accurate geographical location of such asset at all times.

Key aspects addressed by the review (continued)

Logbooks and recordkeeping obligations (continued)

The draft legislation allows industry-specific simplified logbooks in –

- Agriculture

Simplified usage logbooks for specified diesel-powered equipment and vehicles dedicated to perform predominantly qualifying agricultural activities.

- Qualifying fuel use in the listed dedicated equipment and vehicles must still be substantiated albeit in a simplified logbook format.
- Fuel used in other equipment and vehicles that are not on the dedicated list must be substantiated in the standard logbook format.

- Mining on land

No usage logbooks for underground equipment and vehicles:

- Where fuel is dispensed from surface to sub-surface storage facilities not to be returned to the surface again and all equipment and vehicles powered by such fuel are located permanently and also for use solely within the underground mine, the fuel used in the equipment and vehicles must be substantiated by the dispensing entries in the storage logbooks of the sub-surface storage facilities.

Key aspects addressed by the review (continued)

Logbooks and recordkeeping obligations (continued)

The draft legislation allows industry-specific simplified logbooks in –

- Fishing, Offshore mining, Offshore shipping and Harbour shipping

No storage logbooks for the storage facilities of the fuel tanks that are an integral part of the vessel or installation; and

No usage logbooks for on-board equipment that form part of the usage logbooks for the vessel or installation:

- Provided such particulars of all the fuel received, stored, dispensed, used, disposed of or lost are shown in the usage logbooks for that vessel or installation.

- Rail freight

No usage logbooks for on-board equipment that form part of the usage logbooks for the rail freight locomotive.

Proposals for administrative reform

Administrative enforcement and taxpayer compliance

- Sellers of eligible purchases of fuel to diesel refund users will need to register as such with SARS and be licensed as wholesalers or retailers with DMRE.
 - Users must ensure for themselves that their sellers meet these requirements.
 - SARS will verify the required licensing of sellers with DMRE upon application for registration by such sellers as a condition for their registration.
 - SARS will endeavor in its systems design to provide diesel refund users with access to the necessary confirmation of the registration of sellers.
- Diesel refund users will be required to register with SARS and to also create their electronic user profiles with SARS that will form the basis of enforcement profiling.
 - The registrations are once-off while the electronic user profiles that must be created and maintained will be similar to taxpayer profiles on e-Filing.
 - The electronic user profiles will be interactive and must be kept up to date by diesel refund users within 30 days of any change of details therein.
 - SARS will keep records of the electronic user profile of each diesel refund user over time to inform audits and users are advised to do the same.
 - The standard record-keeping period of five years would apply to diesel refund users' electronic profiles and any information contained therein over time.

Proposals for administrative reform (continued)

Administrative enforcement and taxpayer compliance (cont.)

- The electronic user profile must provide details on the:
 - category of qualifying activity performed by the user;
 - applicable fishing permit or mining authorisation and holder or cessionary;
 - location where the qualifying activities are performed by the user;
 - storage facilities for eligible purchases of fuel controlled by the user;
 - assets powered by eligible purchases of fuel for the qualifying activities; and
 - diesel refund relationships disclosed, re-disclosed and confirmed by the user.
- Relationships to be disclosed, re-disclosed and confirmed include:
 - partnership, joint venture or unincorporated body of persons agreements;
 - sellers to and transporters of eligible purchases of fuel for the user;
 - asset hiring, leasing or chartering agreements for qualifying activities; and
 - contracting or sub-contracting agreements for performing qualifying activities.
- Refund applications are restricted to eligible purchases of fuel used in qualifying activities as supported by the required information current on the user profile and subject to presentation of the prescribed source documentation and logbooks.

Proposals for administrative reform (summary)

Eligible purchases of fuel by the diesel refund user must be –

- from sellers who are registered with SARS, licensed as wholesalers or retailers with DMRE and listed in the profile of the user as its sellers;
- collected by the user, delivered by such sellers, or delivered by transporters who are listed in the profile of the user as its transporters;
- dispensed directly for use or stored in storage facilities which are controlled by the user and listed in the profile of that user as its storage facilities;
- dispensed directly or from such storage facilities for use by the user or by dry contractors of the user, provided the diesel refund relationships between that user and those dry contractors are listed in the profile of such user;
- used by the user or by such dry contractors of the user in the assets which are listed in the profile of that user as the assets powered by its eligible purchases;
- used to perform the qualifying activities which are listed in the profile of the user and prescribed in Note 6 to Part 3 of Schedule No.6 to the Act; and
- supported by the required information current on the profile of the user and subject to presentation of the prescribed source documentation, logbooks and any other proof at such time and in such form as the Commissioner may request.

Envisaged way forward

Legislative amendment process

- The outcome of the external consultation workshops with the respective industries and their representatives in the latter part of 2021 will inform the finalisation of the draft legislation for the diesel refund review.
- The completed diesel refund legislation will be subject to the following legislative amendment approval processes:
 - Amendment of section 75(1C) of the Act is following the Tax Administration Laws Amendment Bill 2021 (TALAB 2021) process through Parliament;
 - Amendments to Note 6 to Part 3 of Schedule No.6 to the Act will be submitted to the Deputy Minister for approval in early 2022; and
 - Amendments to the Rules to the Act and the relevant forms thereunder will be submitted to the Commissioner for approval in early 2022.
- The approved diesel refund legislation will be published in the *Gazette* with a future effective date that will be announced subsequently in the *Gazette*.
 - The publication of the Rules amendments will occur simultaneously with the publication of the Schedule amendments to the Act, as the secondary Rules legislation is subordinate to the primary Schedule legislation.

Envisaged way forward (continued)

Transition period arrangements

- The implementation of the new diesel refund legislation and administration will be preceded by the necessary systems design, development and testing.
- The systems design and development required for the new standalone diesel refund administration and implementation of the new legislation will be consulted timeously with diesel refund users and stakeholders and will be followed by a rigorous testing phase to ensure a smooth transition to the new system.
- Diesel refunds may be claimed within two years from the date of purchase of the diesel, The current system for the processing of diesel refunds will therefore remain operational for two years after the implementation of the new design.
- In order to facilitate the processing of historical refund claims that originated under the present legislation and administration, eligible purchases of diesel with invoice dates from before the effective date of the new legislation will be claimed under the current system and purchases thereafter under the new system.

Thank you
Re a leboha
Re a leboga
Ndza Khensa
Dankie
Ndi a livhuwa
Ngiyabonga
Enkosi
Ngiyathokoza