

Proposed changes to the Distillate Fuel Refund System

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The proposed draft amendments to the diesel refund scheme, which were released recently, has offered some clarity on certain aspects of the scheme, but it remains to be seen whether they will ease some of its more onerous requirements.



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The diesel refund scheme came into existence as an attempt by the State to stimulate and support activity in the primary production industries (mainly agriculture, mining, forestry and fishing). It does so by providing for the refund of a portion of the levies imposed on distillate fuel utilised in those activities, if the relevant requirements are met.

The draft rule and schedule amendments to the diesel refund scheme were released for comment on 9 February 2021 (the Draft Amendments).

For several years, industry and National Treasury have discussed reforming the diesel refund scheme. Some of the suggestions for reform were already dealt with in February 2017, when National Treasury and the South African Revenue Service (Sars) issued a discussion paper for public comment on a review of the diesel fuel tax refund system (the Discussion Paper).

The Discussion Paper proposed several changes, including:

- a shift in emphasis from the "qualifying user" in the current scheme to a preliminary list of "qualifying primary production activities";
 - all diesel-powered equipment and vehicles to be formally placed on record with Sars;
 - that all transport activities from the place of primary production (e.g. the farm), as well as any processing activities, be excluded; and
 - the publication of updated logbook templates which would reflect the specific needs and circumstances of each industry.
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Some of the significant changes proposed in the Draft Amendments include:

- the inclusion of "wet contractors" in the definition of a "user". This proposed amendment will permit contractors who are contracted on a wet basis to also claim diesel refunds of their own. In contrast, a "dry contractor" is now specifically excluded from the definition of a "user", presumably because it would be entitled to register as a diesel refund user in its own right (as contemplated in section 75(1A)(b) of the Customs and Excise Act, 1964)). This seems to be in line with the proposal made in the Discussion Paper to shift the emphasis to "qualifying primary production activities" instead of "qualifying users".
- The current diesel refund system stipulates that diesel refunds may only be claimed when the user either uses the diesel itself to carry out qualifying activities, or supplies it to a contractor to carry out those activities on the user's behalf (i.e. "dry contracting"). When diesel is obtained by the contractor itself ("wet contracting"), diesel refund claims are disallowed.
- the requirement that a "user" must register with Sars as a diesel refund user and create a registration profile on the new electronic communication system on Sars' website. The "user" will, among other requirements, have to register all of its equipment and vehicles used in primary production, as well as its fuel storage facilities.
- The user will only have to substantiate the dispensation and receipt of the distillate fuel to the extent that the equipment, machinery or vehicles were used solely for purposes of primary production activities. However, to the extent that equipment, machinery or vehicles are used for dual purposes, users would still have to keep usage logbooks of the dispensed distillate fuel.
- the transport of agricultural requirements or labourers to or from an agricultural property is specifically excluded in the Draft Amendments. The transportation of mining requirements or labourers to mining sites is also excluded, but the transportation of labourers from the mining site is not specifically dealt with.

Over the years, Sars' interpretation of the logbook requirements has placed onerous burdens on users of distillate fuel. The template logbooks referred to in the Draft Amendments have not yet been published on Sars' website, so it is not yet clear whether Sars' strict approach will persist. Although website links are provided in the Draft Amendments, the templates do not yet appear on the relevant page of Sars' website. It will be interesting to see, in light of the template logbooks, whether Sars has adequately considered the specific needs of the various industries and the difficulties that users face in various sectors to obtain some of the information Sars requires under the current diesel refund scheme.

The Draft Amendments are published on Sars' website and remain open for public comment until 24 March 2021.

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