

Bunker Operations – Documents to be retained

The South African Revenue Service (“**SARS**”) has been cracking down on compliance in respect of petroleum products, including the provision of bunkers to foreign going vessels. Mainly because bunker suppliers can claim a refund of duties and levies if petroleum products are not consumed locally.

Historically, SARS allowed the refund against being furnished with a copy of the duly stamped Bunker Receipt and against processing of a customs clearance (SAD 500) using the appropriate rebate code.

However, SARS is now insisting on strict compliance with SARS’ Excise External Policy on Bunkering of Foreign Going Ships (SE-BFS-02) for the provision of bunkers to foreign going vessels.

In terms of section 7 of the Customs & Excise Act 91 of 1964 (“**CEA**”), a DA1 (report inwards/outwards for ships) and a DA3 (certificate of clearance for ships for a destination outside the Republic), must be provided to SARS when a foreign going vessel enters and leaves South Africa. In addition to the production of a stamped Bunker Receipt and SAD500, SARS may request a copy of the DA1 and DA3 in support of the refund application.

While these documents do not evidence the supply of bunkers, SARS contends that they prove that the vessel is a “foreign going vessel” and that the vessel was in port at the time of the alleged supply of bunkers.

While a clearing agent processes most customs documents, it is customary for the Ship’s Agent to submit DA 1 and DA 3 to SARS.

Best practice thus dictates that all ship owners, operators, managers, bunkering brokers and the like must instruct the relevant Ship Agent attending to the vessel to:

- ensure that the DA1 & DA3 are timeously processed with the Customs section of SARS;
- provide copies of the DA 1 & DA 3 to the relevant supplier of bunkers, where applicable; and
- keep copies of all DA 1’s & DA 3’s for a period of at least **5 years**.

Please be aware that the CEA is a draconian piece of legislation. In the event of non-compliance, SARS may have a right of recourse against multiple parties, including potentially the receiver of bunkers.

In the event of any queries do not hesitate to contact Quintus van der Merwe at gvdm@wylie.co.za or +2731 575 7306 or Taryn Hunkin at thunkin@wylie.co.za or +2731 575 7321.