

SARS – without prejudice

As members of Aspasa are aware, the diesel rebate is still an ongoing process, and the Association's lawyer Freek van Rooyen recently attended a 'without prejudice meeting' in early November at the SARS offices to discuss the way forward as well as the impending High Court application.

For those that are not aware of the dispute, the amendment to Note 6, Item 670.4 of Schedule 6 of the Customs and Excise Act, 1964 (the Customs Act), confirmed that quarries qualify for the diesel refund. However, since the amendment, a number of quarries have been audited and their refund claims disallowed because the activities for which refunds were claimed did not qualify as 'own primary production activities in mining' and record-keeping was said to be non-compliant.

This stance was brought to Aspasa's attention, and the Association corresponded immediately with SARS to clarify the activities that qualify for the diesel refund. Following an initial letter, SARS said that the blasting of rock qualifies, but not the crushing thereof. In response, it was pointed out to SARS that the definition of mineral includes rock, stone, sand, etc.

Additionally, 'quarrying' is listed as an 'own primary production activity in mining'. This, read together with the fact that rock, stone, sand, etc. are different minerals, it is believed that SARS cannot apply a restricted definition of quarrying activities.

From an Aspasa point of view, the application is no longer relevant as the note was amended on 13 December 2013, allowing quarries to claim for the refunds (subject to compliance with the legislation).

At the recently-held meeting, SARS has proposed the following:

1. SARS has refused to withdraw the letters of demand issued, but intends to amend them in terms of Section 3(2) of the Customs Act. The Customs Act allows the Commissioner to either withdraw or amend and SARS has opted to amend.
2. Aspasa members and all other quarries affected will be given the right to make representations to any notice of amendment. (This will include all the litigation matters; matters where Section 96 notices were given; and also disputes referred to Internal Administrative Appeal).
3. Following reconsideration, SARS will either withdraw or issue an amended demand which will be the subject of all the internal dispute resolution processes.
4. That the affected members withdraw the court

application; each party to pay its own cost and allow the pending disputes to be dealt with in the manner stated above.

5. SARS to look at suspension of payment pending resolution of the disputes.
6. SARS to look at Tax Clearance Certificates and it requires a list of members for which application for Tax Clearance Certificates were refused. According to SARS, the refusal of the tax certificate might have nothing to do with the diesel refund disputes, and it will investigate each matter.

According to Van Rooyen, SARS has emphasised that it is important to clarify the qualifying activities and in this regard, may even liaise with National Treasury. An amendment of Note 6 to the Customs Act is also a possibility in clarifying the issue of qualifying activities.

Aspasa is sending a letter to the National Treasury, attaching the correspondence it has had with SARS, in an attempt to get a speedy resolution to this issue.

In the light of the above, Aspasa has asked members to urgently advise on whether the proposed process is acceptable particularly to the members who have been faced with demands, and those involved in the pending High Court application. "It is in the interest of the industry that certainty be obtained regarding the qualifying activities for which the refunds can be claimed," Aspasa director Nico Pienaar says. "If what is proposed will achieve this, then obviously it might be in the interest of the members to agree on the way forward as proposed by SARS."

Aspasa members, if you haven't responded yet, please contact Nico Pienaar at Aspasa directly on tel: (011) 791 3327.

As we head at a frantic pace towards the festive season, may I take the opportunity on behalf of the *Modern Quarrying* team to thank our readers for their support over the last year, and to wish each and every one of you a very special holiday season. May 2015 be a year of peace, happiness, good health and prosperity for us all!

Nico Pienaar

