

**EXPLANATORY
MEMORANDUM**

**EXPLANATORY MEMORANDUM
ON THE EXPORT REGULATIONS**



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



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1. THE EXPORT REGULATIONS

[Applicable Provision: Regulation 8(2)(e)(ii) of the Export Regulations published in the Government Notice R.316 of 2 May 2014]

1.1 BACKGROUND

Part Two – Section A of the Export Regulations published in the Government Notice R.316 of 2 May 2014 (the Export Regulations) provides a procedure to be followed by a vendor who elects to supply movable goods at the rate of zero per cent to a qualifying purchaser, where the movable goods are initially delivered to a harbour, an airport, or supplied by means of a pipeline or electrical line in the Republic of South Africa (the Republic) before being exported.

Regulation 8(2)(e) of the Export Regulations states that a vendor may only elect to levy VAT at the zero rate where the vendor supplies movable goods to a qualifying purchaser or registered vendor and the movable goods are –

- situated at the designated harbour or airport;
- delivered to either the port authority, master of the ship, a container operator, the pilot of an aircraft or are brought within the control area of the airport authority; and
- destined to be exported from the Republic.

Richards Bay Coal Terminal (RBCT) is privately owned and operates the coal terminals at RBCT within the Richards Bay harbour. The coal terminals operated by RBCT are within the Richards Bay harbour precinct. In terms of the National Ports Act, No 12 of 2005 (the NPA), the term “port” is defined to mean any of the ports of Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or a port which has been determined as such in terms of section 10(2). Section 10(2) of the NPA states that the Minister of Transport may by notice in the Gazette determine ports in addition to the ports contemplated in subsection (1) which fall under the jurisdiction of the Authority, being Transnet National Port Authority (the TNPA).

The Minister has, in terms of section 80(d) of the NPA, issued the Ports Limits Regulations in which the port limits of Richards Bay have been clearly provided in Appendix 1 to the regulations. The coal terminals operated by RBCT fall within the Richards Bay port limits.

RBCT uses the port infrastructure (the berths, channels and other services) provided by the TNPA in terms of a lease agreement concluded between the TNPA and RBCT, which also stipulates the obligations of RBCT in relation to security, handling and safety. RBCT also operates the coal terminals under a dry bulk terminal operator license from the TNPA.

Once coal is delivered onto a stockpile at RBCT, it can only be loaded onto a ship for exportation from the Republic. There are no facilities to upload the coal onto trains or vehicles for inland transport. Furthermore, all dry bulk terminal operators must hold a license from the TNPA in terms of section 57 read with section 65 of the NPA to operate a bulk terminal at a port. Similarly, container terminal operators must hold a license from TNPA in terms of section 65 of the NPA.

1.2 REASONS FOR CHANGE

The strict interpretation of regulation 8(2)(e)(ii) of the Export Regulation requires that the coal must be delivered to the port authority (being the TNPA) and the TNPA must take possession of the coal supplied for the supply to qualify for zero-rating,. The mere delivery of coal at RBTC to registered vendors (generally foreign enterprises with no employees or fixed places of business in the Republic) for exportation from the Republic does not meet the requirements of regulation 8(2)(e)(ii) of the Export Regulation and zero-rating will not find application.

In light of the above, the wording of regulation 8(2)(e)(ii) of the Export Regulations seems to be causing practical difficulties in application.

1.3 PROPOSAL

It is proposed that the wording of regulation 8(2)(e)(ii) be revised to include any terminal operators operating under a license of the port authority in terms of section 65 of the NPA.

1.4 EFFECTIVE DATE

The proposed amendment will come into operation on 1 April 2026.