

Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

CHAPTER II

CHARGEABILITY, REIMBURSEMENT, EXEMPTION

SECTION 1

Time and place of chargeability

Article 7

1 Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.

2 For the purposes of this Directive, 'release for consumption' shall mean any of the following:

- a the departure of excise goods, including irregular departure, from a duty suspension arrangement;
- b the holding of excise goods outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of Community law and national legislation;
- c the production of excise goods, including irregular production, outside a duty suspension arrangement;
- d the importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.

3 The time of release for consumption shall be:

- a in the situations referred to in Article 17(1)(a)(ii), the time of receipt of the excise goods by the registered consignee;
- b in the situations referred to in Article 17(1)(a)(iv), the time of receipt of the excise goods by the consignee;
- c in the situations referred to in Article 17(2), the time of receipt of the excise goods at the place of direct delivery.

4 The total destruction or irretrievable loss of excise goods under a duty suspension arrangement, as a result of the actual nature of the goods, of unforeseeable circumstances or force majeure, or as a consequence of authorisation by the competent authorities of the Member State, shall not be considered a release for consumption.

For the purpose of this Directive, goods shall be considered totally destroyed or irretrievably lost when they are rendered unusable as excise goods.

The total destruction or irretrievable loss of the excise goods in question shall be proven to the satisfaction of the competent authorities of the Member State where the total destruction or irretrievable loss occurred or, when it is not possible to determine where the loss occurred, where it was detected.

5 Each Member State shall lay down its own rules and conditions under which the losses referred to in paragraph 4 are determined.

Article 8

- 1 The person liable to pay the excise duty that has become chargeable shall be:
 - a in relation to the departure of excise goods from a duty suspension arrangement as referred to in Article 7(2)(a):
 - (i) the authorised warehousekeeper, the registered consignee or any other person releasing the excise goods or on whose behalf the excise goods are released from the duty suspension arrangement and, in the case of irregular departure from the tax warehouse, any other person involved in that departure;
 - (ii) in the case of an irregularity during a movement of excise goods under a duty suspension arrangement as defined in Article 10(1), (2) and (4): the authorised warehousekeeper, the registered consignor or any other person who guaranteed the payment in accordance with Article 18(1) and (2) and any person who participated in the irregular departure and who was aware or who should reasonably have been aware of the irregular nature of the departure;
 - b in relation to the holding of excise goods as referred to in Article 7(2)(b): the person holding the excise goods and any other person involved in the holding of the excise goods;
 - c in relation to the production of excise goods as referred to in Article 7(2)(c): the person producing the excise goods and, in the case of irregular production, any other person involved in their production;
 - d in relation to the importation of excise goods as referred to in Article 7(2)(d): the person who declares the excise goods or on whose behalf they are declared upon importation and, in the case of irregular importation, any other person involved in the importation.
- 2 Where several persons are liable for payment of one excise duty debt, they shall be jointly and severally liable for such debt.

Article 9

The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which duty becomes chargeable in the Member State where release for consumption takes place.

Excise duty shall be levied and collected and, where appropriate, reimbursed or remitted according to the procedure laid down by each Member State. Member States shall apply the same procedures to national goods and to those from other Member States.

Article 10

- 1 Where an irregularity has occurred during a movement of excise goods under a duty suspension arrangement, giving rise to their release for consumption in accordance with Article 7(2)(a), the release for consumption shall take place in the Member State where the irregularity occurred.
- 2 Where an irregularity has been detected during a movement of excise goods under a duty suspension arrangement, giving rise to their release for consumption in accordance with Article 7(2)(a), and it is not possible to determine where the irregularity occurred, it shall be deemed to have occurred in the Member State in which and at the time when the irregularity was detected.
- 3 In the situations referred to in paragraphs 1 and 2, the competent authorities of the Member States where the goods have been or are deemed to have been released for consumption shall inform the competent authorities of the Member State of dispatch.

4 Where excise goods moving under a duty suspension arrangement have not arrived at their destination and no irregularity giving rise to their release for consumption in accordance with Article 7(2)(a) has been detected during the movement, an irregularity shall be deemed to have occurred in the Member State of dispatch and at the time when the movement began, unless, within a period of four months from the start of the movement in accordance with Article 20(1), evidence is provided to the satisfaction of the competent authorities of the Member State of dispatch of the end of the movement in accordance with Article 20(2), or of the place where the irregularity occurred.

Where the person who guaranteed the payment in accordance with Article 18 has not been, or could not have been, informed that the goods have not arrived at their destination, a period of one month from the date of communication of this information by the competent authorities of the Member State of dispatch shall be granted to enable him to provide evidence of the end of the movement in accordance with Article 20(2), or of the place where the irregularity occurred.

5 However, in the situations referred to in paragraphs 2 and 4, if, before the expiry of a period of three years from the date on which the movement began, in accordance with Article 20(1), it is ascertained in which Member State the irregularity actually occurred, the provisions of paragraph 1 shall apply.

In these situations, the competent authorities of the Member State where the irregularity occurred shall inform the competent authorities of the Member State where the excise duty was levied, which shall reimburse or remit it as soon as evidence of the levying of the excise duty in the other Member State has been provided.

6 For the purposes of this Article, ‘irregularity’ shall mean a situation occurring during a movement of excise goods under a duty suspension arrangement, other than the one referred to in Article 7(4), due to which a movement, or a part of a movement of excise goods, has not ended in accordance with Article 20(2).

SECTION 2

Reimbursement and remission

Article 11

In addition to the cases referred to in Article 33(6), Article 36(5), and Article 38(3), as well as those provided for by the Directives referred to in Article 1, excise duty on excise goods which have been released for consumption may, at the request of a person concerned, be reimbursed or remitted by the competent authorities of the Member State where those goods were released for consumption in the situations fixed by the Member States and in accordance with the conditions that Member States shall lay down for the purpose of preventing any possible evasion or abuse.

Such reimbursement or remission may not give rise to exemptions other than those provided for in Article 12 or by one of the Directives referred to in Article 1.

SECTION 3

Exemptions

Article 12

1 Excise goods shall be exempted from payment of excise duty where they are intended to be used:

- a in the context of diplomatic or consular relations;
- b by international organisations recognised as such by the public authorities of the host Member State, and by members of such organisations, within the limits and under the conditions laid down by the international conventions establishing such organisations or by headquarters agreements;
- c by the armed forces of any State party to the North Atlantic Treaty other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens;
- d by the armed forces of the United Kingdom stationed in Cyprus pursuant to the Treaty of Establishment concerning the Republic of Cyprus dated 16 August 1960, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens;
- e for consumption under an agreement concluded with third countries or international organisations provided that such an agreement is allowed or authorised with regard to exemption from value added tax.

2 Exemptions shall be subject to conditions and limitations laid down by the host Member State. Member States may grant the exemption by means of a refund of excise duty.

Article 13

1 Without prejudice to Article 21(1), excise goods moving under a duty suspension arrangement to a consignee referred to in Article 12(1) shall be accompanied by an exemption certificate.

2 The Commission shall, in accordance with the procedure referred to in Article 43(2), lay down the form and content of the exemption certificate.

3 The procedure laid down in Articles 21 to 27 shall not apply to the movements of excise goods under a duty suspension arrangement to the armed forces referred to in Article 12(1)(c), if they are covered by a procedure which is directly based on the North Atlantic Treaty.

However, Member States may provide that the procedure laid down in Articles 21 to 27 shall be used for such movements taking place entirely on their territory or, by agreement between the Member States concerned, between their territories.

Article 14

1 Member States may exempt from payment of excise duty excise goods supplied by tax-free shops which are carried away in the personal luggage of travellers to a third territory or to a third country taking a flight or sea-crossing.

2 Goods supplied on board an aircraft or ship during the flight or sea-crossing to a third territory or a third country shall be treated in the same way as goods supplied by tax-free shops.

3 Member States shall take the measures necessary to ensure that the exemptions provided for in paragraphs 1 and 2 are applied in such a way as to prevent any possible evasion, avoidance or abuse.

4 Member States which, at 1 July 2008, have tax-free shops situated elsewhere than within an airport or port may, until 1 January 2017, continue to exempt from excise duty excise goods supplied by such shops and carried away in the personal luggage of travellers to a third territory or to a third country.

5 For the purposes of this Article, the following definitions shall apply:

- a 'tax-free shop' means any establishment situated within an airport or port which fulfils the conditions laid down by the competent authorities of the Member States, pursuant in particular to paragraph 3;
- b 'traveller to a third territory or to a third country' means any passenger holding a transport document, for air or sea travel, stating that the final destination is an airport or port situated in a third territory or a third country.