

Council Directive (EU) 2020/262 of 19 December 2019
laying down the general arrangements for excise duty (recast)

CHAPTER II

General procedural provisions

Section 1

Taxable event, chargeability, irregularities during a movement under duty suspension

Article 6

Taxable event, time and place of chargeability, destruction and irretrievable losses

- 1 Excise goods shall be subject to excise duty at the time of:
 - a their production, including, where applicable, their extraction, within the territory of the Union;
 - b their importation or their irregular entry into the territory of the Union.
- 2 Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.
- 3 For the purposes of this Directive, ‘release for consumption’ means any of the following:
 - a the departure of excise goods, including irregular departure, from a duty suspension arrangement;
 - b the holding or storage of excise goods, including cases of irregularity, outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of Union law and national legislation;
 - c the production, including processing, of excise goods and irregular production or processing, outside a duty suspension arrangement;
 - d the importation of excise goods, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement, or the irregular entry of excise goods, unless the customs debt was extinguished under points (e), (f), (g) or (k) of Article 124(1) of Regulation (EU) No 952/2013. If the customs debt was extinguished according to the point (e) of Article 124(1) of Regulation (EU) No 952/2013, Member States may provide in their national law for a penalty taking into account the amount of excise debt which would have been incurred.
- 4 The time of departure from a duty suspension arrangement as referred to in point (a) of paragraph 3 shall be deemed to be:
 - a the time of receipt of the excise goods by the registered consignee in the situations referred to in point (a)(ii) of Article 16(1);
 - b the time of receipt of the excise goods by the consignee in the situations referred to in point (a)(iv) of Article 16(1);
 - c the time of receipt of the excise goods at the place of direct delivery in the situations referred to in Article 16(4).

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

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

7 Partial loss due to the nature of the goods that occurs during a duty suspension movement between the Member States shall not be considered a release for consumption in so far as the amount of loss falls below the common partial loss threshold for those excise goods, unless a Member State has reasonable cause to suspect fraud or irregularity. That part of a partial loss which exceeds the common partial loss threshold for those excise goods shall be treated as a release for consumption.

8 A Member State may lay down its own rules for the treatment of partial losses under duty suspension arrangement not covered by paragraph 7.

9 The total destruction or irretrievable loss, total or partial, of the excise goods as referred to in paragraph 5 shall be proven to the satisfaction of the competent authorities of the Member State where the total destruction or irretrievable loss, total or partial, occurred or, when it is not possible to determine where the loss occurred, where it was detected.

Where total destruction or irretrievable loss, total or partial, of the excise goods is established, the guarantee lodged in accordance with Article 17 shall be released, fully or partially, as appropriate, upon the production of satisfactory proof.

10 The Commission shall adopt delegated acts in accordance with Article 51 establishing the common partial loss thresholds referred to in paragraph 7 of this Article and in Article 45(2) having regard, inter alia, to the nature of the goods, the physical and chemical characteristics of the goods, the ambient temperature during the movement, the distance of the movement or time consumed during movement, specifying the excise goods, the corresponding common partial loss threshold as a percentage of the total quantity and other relevant aspects related to transport of the goods.

In the absence of common partial loss thresholds, Member States shall continue to apply the national provisions.

Article 7

Person liable to pay excise duty

- 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 point (a) of Article 6(3):
 - (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 9(1), (2) and (4): the authorised warehousekeeper, the registered consignor or any other person who guaranteed the payment in accordance with Article 17(1) and (3) 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 or storage of excise goods as referred to in point (b) of Article 6(3): the person holding or storing the excise goods, or any other person involved in the holding or storage of the excise goods, or any combination of such persons in accordance with the principle of joint and several liability;
 - c in relation to the production, including processing, of excise goods as referred to in point (c) of Article 6(3): 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 or irregular entry of excise goods as referred to in point (d) of Article 6(3): the declarant as defined in point (15) of Article 5 of Regulation (EU) No 952/2013 (the ‘declarant’) or any other person as referred to in Article 77(3) of that Regulation and, in the case of irregular entry, any other person involved in that irregular entry.

2 Where several persons are liable for payment of the same excise duty, they shall be jointly and severally liable for such debt.

Article 8

Chargeability conditions and rates of excise duty to be used

The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which the 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.

By way of derogation from the first paragraph, when excise duty rates are changed, stocks of excise goods already released for consumption may be subject, where appropriate, to an increase in, or a reduction of, the excise duty.

Article 9

Irregularities during movements of excise goods under duty suspension

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 point (a) of Article 6(3), the release for consumption shall take place in the territory of 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 point (a) of Article 6(3), and it is not possible to determine where the irregularity occurred, it shall be deemed to have occurred on the territory of 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.

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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 point (a) of Article 6(3) has been detected during the movement, an irregularity shall be deemed to have occurred in the Member State of dispatch at the time when the movement began, unless, within a period of four months from the start of the movement in accordance with Article 19(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 19(2), or of the place where the irregularity occurred.

Where the person who guaranteed the payment in accordance with Article 17 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 that person to provide evidence of the end of the movement in accordance with Article 19(2), or of the place where the irregularity occurred.

5 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 19(1), it is ascertained in which Member State the irregularity actually occurred, paragraph 1 shall apply.

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’ means a situation occurring during a movement of excise goods under a duty suspension arrangement, other than the one referred to in Article 6(5) and (6), due to which a movement, or a part of a movement of excise goods, has not ended in accordance with Article 19(2).

Section 2

Reimbursement and remission

Article 10

Reimbursement and remission

In addition to the cases referred to in Article 37(4), Article 44(5), and Article 46(3), as well as those provided for by Directives 92/83/EEC, 92/84/EEC, 2003/96/EC and 2011/64/EU, 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 State and in accordance with the conditions that the Member State 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 11 or by Directives 92/83/EEC, 92/84/EEC, 2003/96/EC or 2011/64/EU.

Section 3

Exemptions

Article 11

Exemptions from payment of excise duty

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 Member State 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 when such forces take part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy;
- d 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;
- e 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;
- f 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 12

Exemption certificate

1 Excise goods moving from the territory of one Member State to the territory of another Member State under a duty suspension arrangement and subject to the exemption referred to in Article 11(1) shall be accompanied by an exemption certificate. The exemption certificate shall specify the nature and quantity of the excise goods to be delivered, the value of the goods and the identity of the exempt consignee and the host Member State certifying the exemption.

2 Member States may use the exemption certificate referred to in paragraph 1 to cover other fields of indirect taxation and to ensure that the exemption certificate is compatible with conditions and limitations for the grant of exemptions in their national law.

3 The Commission shall adopt implementing acts establishing the form to be used for the exemption certificate. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).

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4 The procedure laid down in Articles 20 to 27 shall not apply to the movements of excise goods under a duty suspension arrangement to the armed forces referred to in point (d) of Article 11(1), 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 20 to 27 shall be used for such movements taking place entirely within their territory or, by agreement between the Member States concerned, between their territories.

Article 13

Excise duty payment exemptions for passengers travelling to third countries or third territories

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 For the purposes of this Article, the following definitions 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.