



Excise duty: Important changes as from 13 February 2023 due to the 7th Act Amending the Acts On Excise Duties

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1 Background

On 30 March 2021, the Seventh Act Amending the Acts On Excise Duties was published in the Federal Tax Gazette. In doing so, the legislator primarily implemented, into national law, the amendments to the Council Directive (EU) 2020/262, laying down the general arrangements for excise duty of 19 December 2019, and the Council Directive (EU) 2020/1151 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages of 29 July 2020. The following major changes come into force on 13 February 2023: the extension of the Excise Movement and Control System (EMCS) to cover the movement of excise goods released for consumption between Member States, possibilities to the extent that no excise duty is to be charged despite formal irregularities, also in the food and drink sector, as well as changes in the charging of excise duties as regards distance sales of excise goods. The amendments concern the harmonised excise duties on manufactured tobacco, alcohol products, sparkling wine and intermediate products, beer and energy products. The national regulations for the non-harmonised taxation of coffee and alcopops were, in part, amended earlier. The German customs administration issued a corresponding information letter on 31 January 2023.

2 Extension of the EMCS to cover excise goods released for consumption

The EMCS is a computerised system for monitoring the movement of excise goods under duty suspension. As from 13 February 2023, it is also mandatory for the movement of excise goods for commercial purposes (with the exception of substitutes for manufactured tobacco) released for consumption between EU Member States to be monitored via the EMCS. Until now, this movement was carried out under cover of a so-called simplified accompanying document in paper form. Within the framework of the EMCS, the electronic administrative document replaces the simplified accompanying



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document in accordance with Art. 36 of the revised Council Directive (EU) 2020/262. The consignor and the consignee of the goods must also hold the status of certified consignor or certified consignee for movement of excise goods via the EMCS. This requires an authorisation plus the provision of a guarantee. In the case of tax warehouse operators, registered consignees with permanent authorisation and registered consignors, only the notification and the provision of a guarantee are required. For them, authorisation as a certified consignee/consignor is deemed to have been granted. In order to use the Internet EMCS application, prior registration in the Citizens and Business Customer Portal of Customs is required. The details on the use of EMCS result from the Implementing Regulation (EU) 2022/1637 and the Delegated Regulation (EU) 2022/1636, which are directly applicable. A so-called fallback procedure is also provided for.

3 Distance sales

Previously, a distance seller established in another Member State had to appoint a person established in Germany as an agent for the supply of excise goods to private individuals in the German tax territory. The agent was required to apply for an authorisation, keep records of the supplies, notify the main customs office, in advance, of each supply of goods and provide a guarantee for the excise duties due. The person liable to pay the excise duties was not the distance seller but the agent. As of 13 February 2023, the distance seller can also fulfil these obligations himself. In addition, it remains possible to appoint a “tax representative” established in Germany. If the distance seller appoints a tax representative, the representative is obligatorily liable for the payment of the excise duties. If the distance seller fulfils the obligations himself, he is liable for the payment of the excise duty. The acquisition of manufactured tobacco and tobacco substitutes released for consumption in other Member States by private individuals continues to be prohibited. Special requirements also apply to wine.

4 No chargeability of excise duties despite formal irregularities in the duty suspension procedure

If irregularities occur during movement under duty suspension and the movement cannot be properly completed as a result, excise duties generally become chargeable. In energy tax law, with effect from 1 July 2019, the legislator has already, in certain cases, provided for exceptions from the chargeability of the tax. These exceptions are now also available to the food and drink sector as from 13 February 2023. Accordingly, the excise duty does not arise, despite irregularities, if the goods reach persons who are authorised to receive them under duty suspension. The excise duty also does not become chargeable if the goods have been properly exported, crossed the border for a short period of time or changed destination. The consignor must prove the existence of such exceptional circumstances within a period of four months from the start of the movement. Furthermore, there must be no indications of tax evasion. In addition, there is the possibility of tax relief in the case of minor procedural irregularities in the duty suspension procedure.

5 Comments

With the extension of the use of the EMCS, we witness the legislator taking a further step towards the digitalisation of the excise procedure. The customs administration can better monitor the movement of excise goods released for consumption through electronically transmitted real-time information. For businesses, this initially means an additional effort as regards the process conversion. On the other hand, the extension of the circumstances in which no excise duty becomes chargeable, despite formal irregularities, will lead to economic relief for businesses. They will no longer be liable to pay excise duties if procedural violations occur during the movement under duty suspension and the goods were not actually withdrawn from the duty suspension procedure. The changes in distance sales make it easier for businesses from other EU countries to access the German market, as they are no longer necessarily bound to commission a third party. German distance sellers can also benefit, as other Member States have also changed their regulations on distance sales.