

B 2314

L.N. 273 of 2023

**EXCISE DUTY ACT
(CAP. 382)**

General Arrangements for Excise Duty (Council Directive (EU) 2020/262) (Amendment No. 2) Regulations, 2023

IN EXERCISE of the powers conferred by article 13 of the Excise Duty Act, the Minister responsible for customs has made the following regulations:-

Citation and scope.

S.L. 382.04.

1. (1) The title of these regulations is the General Arrangements for Excise Duty (Council Directive (EU) 2020/262) (Amendment No. 2) Regulations, 2023 and these regulations shall be read and construed as one with the General Arrangements for Excise Duty (Council Directive (EU) 2020/262) Regulations, hereinafter referred to as "the principal regulations".

(2) The scope of these regulations is to further transpose Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast).

Amends regulation 2 of the principal regulations.

2. Immediately after sub-regulation (2) of regulation 2 of the principal regulations there shall be added the following new sub-regulation:

"(3) Articles 14 to 46 of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast) shall not apply to excise goods that have the customs status of non-Union goods as defined in point (24) of Article 5 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast).".

Amends regulation 3 of the principal regulations.

3. In regulation 3 of the principal regulations, immediately after the definition "Act" thereof there shall be added the following new definition:

" "authorised tax warehouse keeper" means a natural or legal person authorised by the Commissioner to produce, process, hold, store, receive or dispatch excise goods under a duty suspension arrangement in an authorised tax warehouse in the course of his business;".

4. Sub-regulation (5) of regulation 9 of the principal regulations shall be substituted by the following new sub-regulation:

Amends regulation 9 of the principal regulations.

"(5) When the goods are no longer to be taken out of the customs territory of the Union, the Commissioner shall notify the competent authorities in the Member State of dispatch thereof by means of the computerised system as soon as he becomes aware that the goods will no longer be taken out of the customs territory of the Union. The competent authorities in the Member State of dispatch shall forward the notification to the consignor without delay. On receipt of the notification, the consignor shall cancel the electronic administrative document as provided for in regulation 8(4) or change the destination of the goods as provided for in regulation 8(8), as may be appropriate."

5. Sub-regulation (1) of regulation 10 of the principal regulations shall be substituted by the following new sub-regulation:

Amends regulation 10 of the principal regulations.

"(1) In the case of movement of energy products under a duty suspension arrangement by sea to a consignee who is not definitely known at the time when the consignor submits the draft electronic administrative document, the Commissioner may authorise the consignor to omit the data concerning the consignee in that document:

Provided that as soon as the data concerning the consignee is known and, at the end of the movement, the consignor shall transmit that data to the Commissioner using the procedure referred to in regulation 8(8)."

6. Regulation 12 of the principal regulations shall be amended by the following:

Amends regulation 12 of the principal regulations.

(a) in the proviso to sub-regulation (3) thereof, the words "regulations 8, 9 and 10, as well as article 10 of the Act," shall be substituted by the words "regulations 8, 9, 11 and 18"; and

(b) in sub-regulation 6 thereof, the words "To that trend, the consignor shall inform the competent authorities of the Member State of dispatch before the change of destination or the splitting of the movement is initiated. Sub-regulations (3) and (4) shall apply *mutatis mutandis*." shall be substituted by the words "To that end, the consignor shall inform the competent authorities of the Member State of dispatch before the change of destination or the splitting of the movement is initiated. Sub-regulations (3) and (5) shall apply *mutatis mutandis*."

B 2316

Amends
regulation 13 of
the principal
regulations.

7. Regulation 13 of the principal regulations shall be amended by the following:

(a) sub-regulation (3) thereof shall be substituted by the following new sub-regulation:

"(3) When, in the cases referred to in regulation 5(1)(a)(iii) or (v), the report of export provided for in regulation 11(1) or the notification that the goods will no longer be taken out of the territory of the Union in accordance with regulation 9(5) cannot be completed at the end of a movement of excise goods either because the computerised system is unavailable or because, in the situation referred to in regulation 12(1) and (2), the procedures referred to in regulation 12(3) have not yet been carried out, the Commissioner shall send to the competent authorities of the Member State of dispatch a document containing the same data as the report of export and certifying that the movement has ended or that the goods will not be taken out of the territory of the Union, except when the report of export or the notification provided for in regulation 9(5) can be completed by means of the computerised system, or in duly justified cases."; and

(b) sub-regulation (5) thereof shall be substituted by the following new sub-regulation:

"(5) As soon as the availability of the computerised system is restored in the Member State of export or the procedures referred to in regulation 12(3) have been carried out, the competent authorities of the Member State of export shall send a report of export provided for in regulation 11(1) and (2) or the notification provided for in regulation 9(5). Regulation 11(3) shall apply *mutatis mutandis*".

Amends
regulation 15 of
the principal
regulations.

8. In sub-regulation (6) of regulation 15 of the principal regulations the words "under regulation 12" shall be substituted by the words "under regulation 26".

Amends
regulation 16 of
the principal
regulations.

9. Regulation 16 of the principal regulations shall be amended by the following:

(a) in sub-regulation (1) thereof the words "of an accompanying document listing the main data from the document referred to in sub-regulations (2) and (3)" shall be substituted by the words "of the electronic simplified administrative document referred to in regulation 17"; and

(b) immediately after sub-regulation (6) thereof there shall be added the following new sub-regulation:

"(6A) An authorised tax warehouse keeper or a registered consignee may act as a certified consignee when dealing with excise goods already released for consumption, in accordance with regulations 15 to 23, after having notified the competent authorities of the Member State of destination."

10. In sub-regulation (1) of regulation 19 of the principal regulations the words "the same data as the draft electronic simplified administrative document referred to in regulation 9(1)" shall be substituted by the words "the same data as the draft electronic simplified administrative document referred to in regulation 16(1)".

Amends regulation 19 of the principal regulations.

11. Regulation 20 of the principal regulations shall be amended by the following:

Amends regulation 20 of the principal regulations.

(a) in sub-regulation (2) thereof the words "the competent authorities of the Member State of destination shall send a copy of the fallback document referred to in sub-regulation (1) to the Commissioner" shall be substituted by the words "the Commissioner shall send a copy of the fallback document referred to in sub-regulation (1) to the competent authorities of the Member State of dispatch"; and

(b) in sub-regulation (3) thereof the words "Regulation 18(2) and (3) shall apply *mutatis mutandis*" shall be substituted by the words "Regulation 18(2) and (4) shall apply *mutatis mutandis*".

12. In sub-regulation (2) of regulation 24 of the principal regulations the words "The chargeability conditions and rate of excise duty to be applied" shall be substituted by the words "The chargeability conditions, the rate of excise duty to be applied and the procedure for payment of excise duty".

Amends regulation 24 of the principal regulations.

13. Regulation 25 of the principal regulations shall be substituted by the following new regulation:

Substitutes regulation 25 of the principal regulations.

"25. (1) In the situations referred to in regulation 15(1) and regulation 24(1), in the event of the total destruction or irretrievable loss of the excise goods during their transport, which were not released for consumption in Malta, as a result of the actual nature of the goods, unforeseeable circumstances, *force majeure*, or as a consequence of authorisation by the Commissioner, the excise duty shall not be chargeable in Malta:

B 2318

Provided that the total destruction or irretrievable loss of the excise goods in question shall be proven to the satisfaction of the Commissioner:

Provided further that the guarantee lodged pursuant to regulation 16(2)(a) or regulation 24(4) shall be released.

(2) For the purpose of these regulations, the goods shall be deemed as totally destroyed or irretrievably lost when they are rendered unusable as excise goods.

(3) In the event of partial loss due to the nature of the goods that occurs during their transport in the territory of a Member State other than the Member State in which they were released for consumption, excise duty shall not be chargeable in that Member State when the amount of loss falls within the common partial loss threshold for those excise goods set out in accordance with Article 6(9) of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast), unless a Member State has reasonable cause to suspect fraud or irregularity.

(4) The total destruction or irretrievable loss, total or partial, of the excise goods as referred to in sub-regulation (1) shall be proven to the satisfaction of the Commissioner.

(5) Where the total destruction or irretrievable loss, total or partial, of the excise goods is established, the guarantee lodged in accordance with regulation 16(2)(a) or regulation 24(4)(a) shall be released, fully or partially, as may be appropriate, upon the production of satisfactory proof.

(6) The provisions of this regulation shall be without prejudice to the provisions of regulation 17(2) of the Sixth Schedule to the Act, as may be the case."

Amends
regulation 26 of
the principal
regulations.

14. Sub-regulation (3) of regulation 26 of the principal regulations shall be substituted by the following new sub-regulation:

"(3) The excise duty shall be due from the person who guaranteed payment thereof in accordance with regulation 16(2)(a) or regulation 24(4)(a) and from any person who participated in the irregularity:

Provided that where several persons are liable for payment of the same excise duty, they shall be jointly and severally liable for such debt:

Provided further that if the excise goods were released for consumption, the Commissioner shall, upon request, reimburse or remit the excise duty in the Member State where the irregularity occurred or was detected:

Provided further that the Commissioner shall release the guarantee lodged pursuant to regulation 16(2)(a) or regulation 24(4)(a).".

15. Regulation 27 of the principal regulations shall be substituted by the following new regulation:

Substitutes regulation 27 of the principal regulations.

"27. (1) The Commissioner, under the conditions fixed by him, shall require that the risks inherent in the movement under suspension of excise duty to be covered by a guarantee provided by the authorised tax warehouse keeper of dispatch or the registered consignor:

Provided that when excisable goods are dispatched from Malta, the Commissioner shall, under conditions set by him, allow the guarantee to be provided by the authorised tax warehouse keeper of dispatch or the registered consignor and jointly by any two (2) or more of the following persons:

- (a) the transporter;
- (b) the carrier;
- (b) the owner of the excise goods; or
- (c) the consignee.

(2) Without prejudice to the right of the Commissioner to request any guarantee or security that he may deem necessary, the Commissioner shall not require a guarantee for the movement of energy products by fixed pipeline, except under duly justified circumstances."

16. Immediately after regulation 27 of the principal regulations

Adds new regulation to the principal regulations.

there shall be added the following new regulation:

"Transitional
provisions.

28. (1) In terms of Article 54 of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast), the receipt of excisable goods under the formalities set out in Articles 33, 34 and 35 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC shall only be allowed until 31st December 2023.

(2) The notification referred to in regulation 9(5) may only be made by means other than the computerised system until 13th February 2024."
