

# **ACT**

of 6<sup>th</sup> December 2008

## **on Excise Duty <sup>1</sup>**

### **SECTION I**

#### **General Provisions**

##### **Article 1 [Scope of Regulations]**

1. This Act sets forth the rules of taxation with excise duty tax, hereinafter referred to as the “excise duty”, of excise goods and passenger cars, the organisation of turnover of excise goods, and the marking with excise stamps.
2. The excise duty shall be the revenue of the State budget.

##### **Article 2 [Legal Definitions]**

1. The terms used herein shall have the following meaning:
  - 1) excise goods – energy products, electricity, alcoholic beverages, manufactured tobacco and raw tobacco, as specified in Annex No. 1 hereto;
    - 1a) coal products – energy products, as specified in items 19-21 of Annex No. 1 hereto;
    - 1b) gas products – energy products falling within the following CN codes: 2705 00 00, 2711 11 00, 2711 21 00, 2711 29 00, and other heating fuels referred to in Article 89(1)(15)(b), except for energy products falling within CN code 2901 10 00;
  - 2) territory of the country – the territory of the Republic of Poland;
  - 3) territory of a Member State – the territory of the State to which pursuant to Article 52 of the Treaty on European Union and Article 349 and 355 of the Treaty on the Functioning of the European Union those Treaties apply, under exclusion of the territory of the country, whereby:
    - a) the following shall not be deemed to be the territory of a Member State:
      - the Canary Islands, with prejudice to paragraph 2,
      - <sup>2</sup> French territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union, with prejudice to paragraph 3,
      - the Åland Islands,
      - the Channel Islands,
      - the territories subject to Article 355(3) of the Treaty on the Functioning of the European Union,

- the Island of Heligoland,
- the territory of Büsingen,
- Ceuta,
- Melilla,
- Livigno,
- Campione d'Italia,
- the Italian waters of Lake Lugano,

b) the movement of excise goods:

- starting in the Principality of Monaco or intended for the Principality of Monaco shall be deemed to be a movement starting in the French Republic or intended for the French Republic,
- starting in Jungholz and Mittelberg (Kleines Walsertal) or intended for Jungholz and Mittelberg shall be deemed to be a movement starting in the Federal Republic of Germany or intended for the Federal Republic of Germany,
- starting on the Isle of Man or intended for the Isle of Man shall be deemed to be a movement starting in the United Kingdom of Great Britain and Northern Ireland or intended for the United Kingdom of Great Britain and Northern Ireland,
- starting in San Marino or intended for San Marino shall be deemed to be a movement starting in the Italian Republic or intended for the Italian Republic,
- starting in the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland of Akrotiri and Dhekelia or intended for the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland of Akrotiri and Dhekelia shall be deemed to be a movement starting in the Republic of Cyprus or intended for the Republic of Cyprus;

4) territory of the European Union – the territory of the country and the territories of the Member States;

5) territory of a third country – a territory other than the territory of the European Union;

6) export – the exportation of excise goods or passenger cars from the territory of the country outside the territory of the European Union approved by the customs office which supervises the actual exit of such excise goods or passenger cars outside the territory of the European Union;

7) import – the importation of:

- a) passenger cars from the territory of a third country to the territory of the country,
- b) excise goods from the territory of a third country to the territory of the country:
  - if those goods are not placed under the customs suspensive procedure upon their entry into the territory of the country,
  - if those goods are released from the customs suspensive procedure or if that procedure has been completed and a customs debt has arisen;

8) intra-Community supply – the movement of excise goods or passenger cars from the territory of the country to the territory of a Member State;

9) intra-Community acquisition – the movement of excise goods or passenger cars from the territory of a Member State to the territory of the country;

10) tax warehouse – a place where specific excise goods are: produced, stored, reloaded, or to which those goods are placed, or from which those goods are removed – under the excise duty suspension arrangement; in the case of a tax warehouse located on the territory of the country, that place shall be specified in the authorisation issued by the competent director of customs office;

11) tax warehouse keeper – an entity that has been granted an authorisation for operating a tax warehouse;

12) excise duty suspension arrangement – a procedure applied during the production, storage, reloading and movement of excise goods during which, if the terms specified herein and the implementing legislation issued based hereupon are met, no tax liability arises out of the tax obligation;

13) registered consignee – an entity that has been granted an authorisation for intra-Community acquisition or for a single intra-Community acquisition of excise goods dispatched under the excise duty suspension arrangement, within the economic activity conducted, hereinafter referred to as the “authorisation for intra-Community acquisition of excise goods as registered consignee” or the “authorisation for a single intra-Community acquisition of excise goods as registered consignee” respectively;

14) (repealed);

14a) registered consignor – an entity that has been granted an authorisation for dispatch of imported excise goods from the place of importation under the excise duty suspension arrangement, within the economic activity conducted;

15) e-AD – an electronic administrative document based on which excise goods are moved under the excise duty suspension arrangement;

15a) fallback e-AD – a document, containing the same data as an e-AD, based on which excise goods are moved under the excise duty suspension arrangement, if the System is unavailable;

16) <sup>3</sup> simplified accompanying document – a document based on which excise goods referred to in Annex No. 2 hereto which are not under the excise duty suspension arrangement, and ethyl alcohol completely denatured with denaturants under the Commission Regulation (EC) No. 3199/93 of 22<sup>nd</sup> November 1993 on the mutual recognition of procedures for the complete denaturing of alcohol for the purposes of exemption from excise duty (OJ L 288, 23.11.1993, p. 12, as amended; OJ Polish Special Edition, Chapter 9, v. 1, p. 249, as amended) are moved within intra-Community supply or acquisition;

17) excise stamps – stamps specified by the minister competent for public finance used to mark excise goods subject to the marking obligation, including:

- a) tax excise stamps, which confirm the payment of an amount corresponding with the value of the tax excise stamps,
- b) legalisation excise stamps, which confirm the right of an entity obliged to mark the excise goods with excise stamps to offer those products for sale;

18) <sup>4</sup> invoice – an invoice within the meaning of the provisions on tax on goods and services, containing the data and address of the acquirer, and the data concerning the quantity (number) and measurement unit of the excise goods or passenger cars purchased;

18a) <sup>5</sup> document of supply – a document based on which excise goods subject to excise exemption due to their intended use or excise goods referred to in Annex No. 2 hereto taxed with zero excise rate due to their intended use are moved within the territory of the country;

19) end consumer – an entity purchasing electricity, holding no concession for generation, transmission, distribution of, or turnover of electricity within the meaning of the provisions of the Act of 10<sup>th</sup> April 1997 – the Energy Law (Journal of Laws of 2012, item 1059 and of 2013, items 984 and 1238), except for:

a) a company operating a commodity exchange within the meaning of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange (Journal of Laws of 2014, item 197) purchasing electricity in the capacity referred to in Article 5(3a) of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange,

b) commodity brokerage houses and brokerage houses within the meaning of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange purchasing electricity in the capacity referred to in Article 9(2) of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange, or purchasing electricity on the account of a mandator in an organised market within the meaning of the Act of 29<sup>th</sup> July 2005 on Turnover of Financial Instruments (Journal of Laws of 2014, item 94),

c) exchange clearing house, Krajowy Depozyt Papierów Wartościowych S.A. [Central Securities Depository of Poland], or a company to which the Central Depository transferred the performance of tasks referred to in Article 48(2) of the Act of 29<sup>th</sup> July 2005 on Turnover of Financial Instruments, purchasing electricity in the capacity referred to in Article 9(2) of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange,

d) company operating at the same time a settlement house and a clearing house within the meaning of the Act of 29<sup>th</sup> July 2005 on Turnover of Financial Instruments, purchasing electricity in the capacity referred to in Article 68a(14) of the Act of 29<sup>th</sup> July 2005 on Turnover of Financial Instruments, or for the purpose of settling and clearing transactions made in an organised market;

19a) gas end consumer – an entity which:

a) purchases within the territory of the country, imports, or purchases within Intra-community acquisition gas products, or

b) holds gas products acquired otherwise than by purchase

- which is not an intermediary gas entity;

20) excise goods losses – any losses of:

a) excise goods specified in Annex No. 2 hereto with excise duty rate other than zero rate, arisen during the application of the excise duty suspension arrangement, except for losses arisen during the production of energy products or manufactured tobacco,

- b) the following goods exempt from excise duty due to their intended use:
  - alcoholic beverages,
  - energy products, except for the coal products moved or, in the case of an intermediary entity, also stored,
- c) coal products, arisen during their movement within the territory of the country in connection with the performance of an activity subject to excise duty,
- d) <sup>6</sup> excise goods not specified in Annex No. 2 hereto with excise duty rate other than zero rate, arisen during the application of the excise duty suspension arrangement, except for losses arisen during production,
- e) <sup>7</sup> excise goods specified in Annex No. 2 hereto taxed with zero excise rate due to their intended use, arisen during:
  - the application of the excise duty suspension arrangement, except for losses arisen during production,
  - movement not under the excise duty suspension arrangement, based on the document of supply;

21) sale – an actual or legal transaction the result of which is the transfer of holding or ownership of the subject of sale to another entity;

22) consuming entity – an entity:

- a) having its place of residence, seat, or place of establishment within the territory of the country which consumes excise goods exempt from excise duty due to their intended use for purposes entitling to the exemption,
- b) having no place of residence, seat, or place of establishment within the territory of the country which receives the acquired energy products exempt from excise duty due to their intended use, specified in Article 32(1)(1) and (2), directly to a container fixed permanently on an aircraft or a craft, if the aircraft or craft to which the acquired goods are supplied are specified in the document of supply;

23) intermediary entity – an entity having its seat or place of residence within the territory of the country that has been granted an authorisation for conducting activity involving the supply of excise goods exempt from excise duty due to their intended use from a tax warehouse within the territory of the country to a consuming entity, and in the case of the excise goods referred to in Article 32(1) also goods directly imported;

23a) intermediary coal entity – an entity having its seat or place of residence within the territory of the country:

- a) which sells, supplies within intra-Community supply, acquires within intra-Community acquisition, imports, or exports coal products, or
- b) uses coal products for purposes subject to excise exemption and for purposes not subject to excise exemption, or
- c) uses coal products for purposes subject to excise exemption and for purposes not subject to taxation of excise duty

- which notified the competent director of customs office of that activity in writing;

23b) <sup>8</sup> intermediary tobacco entity – an entity having its place of residence or seat within the territory of the country, a foreign entrepreneur having their PE within the territory of the country, established on the terms and conditions set out in the Act of 2<sup>nd</sup> July 2004 on Freedom of Economic Activity (Journal of Laws of 2015, item 584, as amended), or a foreign entrepreneur which designated an entity representing them within the territory of the country, conducting economic activity involving raw tobacco, which is entered into the register of intermediary tobacco entities;

23c) coal end consumer – an entity which:

- a) purchases within the territory of the country, imports, or purchases within Intra-community acquisition coal products, or
- b) holds coal products acquired otherwise than by purchase

- which is not an intermediary coal entity;

23d) intermediary gas entity – an entity having its seat or place of residence within the territory of the country, or holding a concession for turnover of natural gas within the territory of the country:

- a) which sells, supplies within intra-Community supply, acquires within intra-Community acquisition, imports, or exports gas products, or
- b) uses gas products for purposes subject to excise exemption and for purposes not subject to excise exemption, or
- c) uses gas products for purposes subject to excise exemption and for purposes subject to zero excise rate, or
- d) which is a company operating a commodity exchange within the meaning of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange purchasing gas products in the capacity referred to in Article 5(3a) of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange, or
- e) which is a commodity brokerage house or a brokerage house within the meaning of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange purchasing gas products in the capacity referred to in Article 9(2) of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange, or purchasing gas products on the account of a mandator in an organised market within the meaning of the Act of 29<sup>th</sup> July 2005 on Turnover of Financial Instruments, or
- f) which is an exchange clearing house, Krajowy Depozyt Papierów Wartościowych S.A. [Central Securities Depository of Poland], or a company to which the Central Depository transferred the performance of tasks referred to in Article 48(2) of the Act of 29<sup>th</sup> July 2005 on Turnover of Financial Instruments, purchasing gas products in the capacity referred to in Article 9(2) of the Act of 26<sup>th</sup> October 2000 on Commodity Exchange, or
- g) which is a company operating at the same time a settlement house and a clearing house within the meaning of the Act of 29<sup>th</sup> July 2005 on Turnover of Financial Instruments, purchasing gas products in the capacity referred to in Article 68a(14) of the Act of 29<sup>th</sup> July 2005 on Turnover of Financial Instruments, or for the purpose of settling and clearing transactions made in an organised market

- which notified the competent director of customs office on that activity in writing;

24) customs suspensive procedure – the customs suspensive procedure within the meaning of the provisions of the customs law, as well as entry of excise goods to a place of temporary storage, to free zones, or to free warehouses;

25) place of importation – a place other than a tax warehouse in which imported excise goods are placed at the moment of their release for free circulation within the meaning of the provisions of the customs law;

26) System – the national ICT system intended for the operation of movement of excise goods under the excise duty suspension arrangement, in particular for sending the e-AD, report of receipt, and report of export, cancellation of the e-AD, change of destination, and notification of change of destination referred to in the Commission Regulation (EC) No. 684/2009 of 24<sup>th</sup> July 2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty (OJ L 197, 28.07.2009, p. 24, as amended);

27) report of receipt – a report submitted via the System that the movement of excise goods under the excise duty suspension arrangement has been completed;

28) fallback report of receipt – a document containing the same data as the report of receipt that the movement of excise goods under the excise duty suspension arrangement has been completed, used if the System is unavailable;

29) report of export – a report submitted via the System that in the case of export the movement of excise goods under the excise duty suspension arrangement has been completed;

30) fallback report of export – a document containing the same data as the report of export that in the case of export the movement of excise goods under the excise duty suspension arrangement has been completed, used if the System is unavailable;

30a) <sup>9</sup> alternative proof of completion of the excise duty suspension arrangement – a confirmation issued by competent tax authorities within the territory of the country or by competent authorities of a Member State that the excise goods dispatched under the excise duty suspension arrangement have been received by the recipient or have been exported outside the territory of the European Union which includes in particular the nature, quantity, and Combined Nomenclature (CN) codes of those goods, the date of receipt or export outside the territory of the European Union, and the identification data of the entity receiving the goods, or designation of a customs office supervising the exit thereof outside the territory of the European Union, with identification data of the exporting entity;

31) dispatching entity – a tax warehouse keeper or a registered consignor which dispatches excise goods under the excise duty suspension arrangement;

32) receiving entity – a tax warehouse keeper, a registered consignee, an acquirer within the territory of a Member State being an entity authorised by competent tax authorities of that Member State to receive excise goods under the excise duty suspension arrangement,

or an entity exempt from excise duty under Article 31(1) to which the excise goods are dispatched under the excise duty suspension arrangement;

33) mineralogical processes – processes classified within the NACE under code DI 26 “manufacture of other non-metallic mineral products” in the Council Regulation (EEC) No. 3037/90 of 9<sup>th</sup> October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1, as amended, OJ Polish Special Edition, Chapter 02, v. 4, p. 177, as amended).

2. Should the Kingdom of Spain give declaration, pursuant to Article 5(4) of the Council Directive 2008/118/EC of 16<sup>th</sup> December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.01.2009, p. 12), that the Directive shall apply to the Canary Islands, the Canary Islands shall be deemed the territory of a Member State.

3. <sup>10</sup> Should the Republic of France give declaration, pursuant to Article 5(5) of the Council Directive 2008/118/EC of 16<sup>th</sup> December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.01.2009, p. 12, as amended), that the Directive shall apply to French overseas territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union, these territories shall be deemed the territory of a Member State.

4. <sup>11</sup> The minister competent for public finance shall announce, by means of a notice in the Official Journal of the Minister of Finance, the date from which the Canary Islands and the French territories referred to in Article 349 and 355(1) of the Treaty on the Functioning of the European Union shall be deemed the territory of a Member State.

### **Article 3 [Classification of Excise Goods]**

1. <sup>12</sup> For the purpose of collection of excise duty and marking of excise goods with excise stamps, as well as for binding excise information, hereinafter referred to as the “BEI”, a classification shall be applied arranged in a manner corresponding to the Combined Nomenclature (CN) compliant with the Council Regulation (EEC) No. 2658/87 of 23<sup>rd</sup> July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 07.09.1987, p. 1, as amended; OJ Polish Special Edition, Chapter 2, v. 2, p. 382, as amended).

2. Any amendments to the Combined Nomenclature (CN) shall result in no amendments to the taxation of excise goods and passenger cars, if not set out herein.

### **Article 4 [Tax Reliefs and Exemptions Granted under Separate Provisions]**

Any tax reliefs and exemptions granted under separate provisions shall not apply to excise duty.



### **Article 5 [Activities and Facts as Subject of Excise Duty Taxation]**

Activities or facts referred to in Article 8(1)-(5), Article 9(1), Article 9a(1) and (2), Article 9b(1) and (2), Article 9c(1) and (2), and Article 100(1) and (2) are subject to taxation with excise duty regardless of whether they were performed or arose with or without meeting the conditions and forms set out by the provisions of law.

### **Article 6 [Application of Tax Ordinance]**

To proceedings in cases arising out of the provisions hereof the provisions of the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance (Journal of Laws of 2012, item 749, as amended) shall apply, unless otherwise set out by the provisions hereof.

### **Article 7 [Excise Liaison Office (ELO)]**

1. An administrative cooperation unit in the matters of excise duty shall be the excise liaison office (ELO) located at the office providing service to the minister competent for public finance, which performs tasks in the area of administrative cooperation in the field of excise duty referred to in the Council Regulation (EC) No. 2073/2004 of 16<sup>th</sup> November 2004 on administrative cooperation in the field of excise duties (OJ L 359, 04.12.2004, p. 1).
2. The minister competent for public finance may designate with an order also another unit for administrative cooperation in the field of excise duty, specified in the regulation referred to in paragraph (1), setting out the scope of duties of that unit, and the rules of its cooperation in the field of excise duty with tax authorities.

### **Article 7a. [Cross-Border Bridge]**

Should the Republic of Poland enter with a European Union Member State into an agreement on responsibility for the construction or maintenance of a cross-border bridge, the bridge and the place of its construction referred to in the agreement shall be deemed a part of the territory of the country which is responsible for the construction or maintenance of the bridge under the agreement.

### **Article 7b. [Binding Tariff Information]**

1. <sup>13</sup> Binding tariff information referred to in Article 12 of the Council Regulation (EEC) No. 2913/92 of 12<sup>th</sup> October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1, as amended; OJ Polish Special Edition, Chapter 2, v. 4, p. 307, as amended) shall apply accordingly within the turnover of excise goods and passenger cars within the territory of the country and to intra-Community acquisition thereof, pursuant to the provisions of the Council Regulation (EEC) No. 2913/92 of 12<sup>th</sup> October 1992 establishing the Community Customs Code and the Commission Regulation (EEC) No. 2454/93 of 2<sup>nd</sup> July 1993 laying down provisions for the implementation of Council Regulation (EEC) No.

2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1, as amended; OJ Polish Special Edition, Chapter 2, v. 6, p. 3, as amended).

2. The provision of paragraph (1) shall not apply to binding tariff information issued based on an amendment to the Combined Nomenclature which is not set out herein.

#### **Article 7c. [Application of Simplified Procedures]**

1. The single authorisation for the application of a simplified procedure referred to in Article 1(13) of the Commission Regulation (EEC) No. 2454/93 of 2<sup>nd</sup> July 1993 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code shall not apply to excise goods.

2. The simplified procedures referred to in Article 76(1) of the Council Regulation (EEC) No. 2913/92 of 12<sup>th</sup> October 1992 establishing the Community Customs Code shall not apply to:

1) <sup>14</sup> ethyl alcohol, except for cases when the export procedure covers ethyl alcohol contained in cosmetic preparations falling within CN codes: 3304, 3305, 3306 and 3307, perfumes and toilet waters falling within CN code 3303, essential oils falling within CN code 3301, and mixtures of fragrances falling within CN code 3302;

2) motor fuels, with prejudice to paragraphs 3 and 4.

3. The simplified procedures referred to in Article 76(1) of the Council Regulation (EEC) No. 2913/92 of 12<sup>th</sup> October 1992 establishing the Community Customs Code shall apply to entities whose turnover within the meaning of the provisions on tax on goods and services with motor fuels exceeded PLN 40 million in the previous tax year.

4. In the case of an entity beginning the activity involving motor fuels, the condition to apply the simplified procedures referred to in Article 76(1) of the Council Regulation (EEC) No. 2913/92 of 12<sup>th</sup> October 1992 establishing the Community Customs Code shall be:

1) in the year of the activity commencement – to submit a declaration in which the entity declares to achieve in a given year a turnover exceeding the required amount reduced proportionately to the number of months of conducting the economic activity;

2) in the year following the year of the activity commencement – to achieve in the year of the activity commencement a turnover exceeding the required amount reduced proportionately to the number of months of conducting the economic activity.

### **SECTION IA**

#### **<sup>15</sup> Binding Excise Information**

#### **Article 7d. [Decision on Binding Excise Information (BEI)]**

1. The BEI is a decision issued for the purposes of taxation of an excise good or a passenger car with excise duty, organisation of turnover of excise goods, or marking those goods with excise stamps, which specifies the following:

- 1) the classification of the excise good or the passenger car arranged in a manner corresponding to the Combined Nomenclature (CN), or
- 2) the nature of the excise good by describing that good to such an extent of detail that is sufficient to determine the taxation of the excise good with excise duty, organise turnover of excise goods, or mark those goods with excise stamps.

2. In the case referred to in paragraph (1)(2), the BEI shall be issued when the provision of the code of classification arranged in a manner corresponding to the Combined Nomenclature (CN) is not sufficient to determine the taxation of the excise goods with excise duty, organise turnover of excise goods, or mark those goods with excise stamps.

3. The BEI shall be binding for the tax authorities towards the entity for which it is issued, with regard to excise goods or passenger cars towards which the activities subject to taxation with excise duty are performed following the date of issue of the BEI.

#### **Article 7e. [Request for Issue of BEI]**

1. The BEI shall be issued upon request and cover only one excise good or one passenger car.

2. The request to issue the BEI shall include in particular:

- 1) the given name and surname or business name of the requesting entity, and the address of its place of residence or seat;
- 2) the given name, surname and the place of residence of the attorney of the requesting entity, if appointed;
- 3) a detailed description of the excise good or passenger car allowing such identification thereof as to classify it in accordance with the Combined Nomenclature (CN) or determine the nature of the excise good;
- 4) a description of the composition of the excise good, and the method of tests or analyses employed to determine it, if the classification or determination of its nature depends thereon.

3. The request to issue the BEI shall be appended with documents relating to the excise goods or passenger cars, in particular samples, photographs, plans, schemes, catalogues, attestation certificates, instructions, producer information, or other available documents allowing the tax authority to properly classify the excise good or passenger car or to determine the nature of the excise good.

4. Should the request to issue the BEI not meet the requirements referred to in paragraphs (2) and (3), the tax authority shall request the shortcomings to be completed within 7 days, with instruction that failing to do so shall result in refusal to consider the request.

5. In the matter of the refusal to consider the request to issue the BEI, an order shall be issued which may be appealed against.
6. The minister competent for public finance shall determine with a regulation the template of the request to issue the BEI, taking into account the data specified in paragraph (2) and the standardisation of requests submitted.

#### **Article 7f. [Fee for Tests or Analyses of Excise Goods or Passenger Cars]**

1. The requesting entity shall be obliged to pay a fee for the performed tests or analyses of excise goods or passenger cars, if the consideration of the request to issue the BEI requires a test or an analysis.
2. The tests or analyses of excise goods or passenger cars may be performed by customs laboratories or other accredited laboratories, as well as by research institutes of the Polish Academy of Sciences, other research institutes, or international academic institutes established under separate provisions, acting within the territory of the country, equipped with appliances necessary for the given type of test or analysis.
3. The fee referred to in paragraph (1) charged for the tests or analyses performed by customs laboratories shall be the revenue of the State budget.
4. Upon request of the tax authority, the requesting entity shall be obliged to make an advance payment towards the fee for tests or analyses referred to in paragraph (1) within no less than 7 days. In case of failing to do so within the specified time limit, the tax authority shall issue an order on refusal to consider the request to issue the BEI.
5. The amount of the fee referred to in paragraph (1) and the time limit to pay shall be specified by the tax authority with an order which may be appealed against.
6. The amount of the fee referred to in paragraph (1) should correspond to the actual expenditures incurred for the tests or analyses performed. Should the tests or analyses be performed by customs laboratories, the amount of the fee referred to in paragraph (1) should correspond to the lump rates of fees set out in the provisions issued under Article 92(4) of the Act of 19<sup>th</sup> March 2004 – the Customs Law (Journal of Laws of 2013, item 727, as amended), provided that those rates are set out in those provisions.
7. Should the amount of the advance payment made towards the fee referred to in paragraph (1) exceed the amount of the fee specified in the order issued under paragraph (5), or should the fee not be due, the undue amounts shall be reimbursed no later than within 3 months of the completion date of the procedure on the BEI.

#### **Article 7g. [Time Limit for Issue of BEI]**

The tax authority shall issue the BEI without undue delay, no later however than within 3 months of the receipt date of the request to issue the BEI. The time limit shall be exclusive of the time limits and periods referred to in Article 139(4) of the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

**Article 7h. [Expiry of BEI]**

1. The BEI shall expire in case of an amendment to the provisions of the tax law concerning excise duty with regard to the excise good or the passenger car, if as the result of that amendment the BEI becomes non-compliant with those provisions.
2. The entity for which the BEI is issued which expires under paragraph (1) may apply it for no longer than six months of the date of expiry, provided that the BEI concerns an excise good or a passenger car which is covered by the objects of the economic activity of the BEI holder.

**Article 7i. [Refusal to Issue BEI]**

The tax authority shall issue a decision on refusal to issue the BEI, if the request to issue the BEI:

- 1) does not concern an excise good or a passenger car;
- 2) referred to in Article 7d(1)(1) concerns an excise good or a passenger car for which the entity for which the BEI is to be issued holds an effective binding tariff information referred to in Article 7b(1), and the circumstances referred to in Article 7b(2) have not occurred;
- 3) concerns information on the nature of the excise good for which the entity for which the BEI is to be issued holds an individual tax ruling within the meaning of the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

**Article 7j. [Processing of Data from Request to Issue BEI]**

The tax authority, in order to perform tasks concerning the issue of the BEI, may process the data provided in the request to issue the BEI, provided that it complies with the provisions on the protection of personal data and secrets under statutory protection.

**Article 7k. [Request and Decision on BEI in Public Information Bulletin]**

The BEI with the request to issue it shall be published in the Public Information Bulletin of the tax authority competent for the BEI following the removal of data identifying the requesting entity and other entities provided in the request to issue the BEI, and the data covered by trade secret.

**SECTION II****Taxation of Excise Goods with Excise Duty**

## **Chapter 1**

### **Subject of Taxation and Arising of Tax Obligation**

#### **Article 8 [Subject of Taxation]**

1. The subject of taxation with excise duty shall be:

- 1) production of excise goods;
- 2) entry of excise goods to a tax warehouse;
- 3) import of excise goods, except for import of excise goods which are subsequently dispatched from the import place by a registered consignor who is not the importer of those goods under the excise duty suspension arrangement;
- 4) intra-Community acquisition of excise goods, except for intra-Community acquisition to a tax warehouse;
- 5) exit from a tax warehouse of excise goods which do not belong to the tax warehouse keeper of that warehouse outside the excise duty suspension arrangement, except for excise goods exempt from excise duty due to their intended use, by an entity referred to in Article 13(3);
- 6) dispatch of imported excise goods from the place of importation by a registered consignor who is not the importer of those goods under the excise duty suspension arrangement.

2. The subject of taxation with excise duty shall also be:

- 1) use of excise goods exempt from excise duty due to their intended use or of excise goods with a specific excise duty rate related to their intended use, if their use:
  - a) was inconsistent with the intended use entitling to the excise exemption or the application of the excise duty rate, or
  - b) took place without meeting the conditions entitling to the excise exemption or the application of the excise duty rate;
- 2) supply of excise goods exempt from excise duty due to their intended use, if it took place without meeting the conditions entitling to the excise exemption;
- 3) sale of excise goods with a specific excise duty rate related to their intended use outside the excise duty suspension arrangement, if the sale took place without meeting the conditions entitling to the application of the excise duty rate;
- 4) acquisition or possession of excise goods outside the excise duty suspension arrangement, if excise duty was not paid for those goods at the amount due, and as a result of a tax control, control proceedings, or tax proceedings tax was not found to be paid.

3. The subject of taxation with excise duty shall also be losses of excise goods or total destruction of excise goods referred to in Article 2(1)(20). A good shall be deemed totally destroyed, if it may no longer be used as an excise good.
4. The subject of taxation with excise duty shall also be the consumption of:
  - 1) excise goods specified in Annex No. 2 hereto referred to in Article 89(2) for the purpose of production of other goods;
  - 2) alcoholic beverages referred to in Article 32(4)(2) and (3) by a consuming entity.
5. The subject of taxation with excise duty shall also be sale or offering for sale of cigarettes or smoking tobacco outside the excise duty suspension arrangement, with payment above the maximum retail selling price, including in combination with other good or service, or in combination with granting the purchaser with a gratuitous bonus in the form of other goods or services, and in the case of cigarettes or smoking tobacco also marked with tax and legalisation excise stamps, if the payment exceeds an amount equal to the sum of the maximum retail selling price and the amount of PLN 1.30 which is due for the legalisation excise stamps.
6. If a tax obligation arises towards an excise good in connection with the performance of one of the activities referred to in paragraph (1), no tax obligation arises due to another activity subject to taxation with excise duty, if the amount of excise duty is, following the completion of the excise duty suspension arrangement, specified or declared at the amount due, unless otherwise set out in the provisions of this Act.

#### **Article 9 [Electricity as Subject of Taxation]**

1. In the case of electricity, the subject of taxation with excise duty shall be:
  - 1) intra-Community acquisition of electricity by an end consumer;
  - 2) sale of electricity to an end consumer within the territory of the country, including by an entity holding no concession for generation, transmission, distribution, or turnover of electricity within the meaning of the provisions of the Act of 10<sup>th</sup> April 1997 – the Energy Law who produced that electricity;
  - 3) electricity consumption by an entity holding the concession referred to in sub-paragraph (2);
  - 4) electricity consumption by an entity holding no concession referred to in sub-paragraph (2) who produced that electricity;
  - 5) import of electricity by an end consumer;
  - 6) electricity consumption by an end consumer, if excise duty for that electricity was not paid at the amount due, and the entity who sold that electricity to the end consumer may not be determined.

2. Losses arisen as the result of transmission or distribution of electricity shall not be deemed electricity consumption, except for electricity consumed in connection with its transmission or distribution and electricity consumed illegally.

3. If a tax obligation arises towards electricity in connection with the performance of one of the activities referred to in paragraph (1), no tax obligation arises due to another activity subject to taxation with excise duty, if the amount of excise duty is specified or declared at the amount due, unless otherwise set out in the provisions of this Act.

#### **Article 9a. [Coal Products as Subject of Taxation]**

1. In the case of coal products, the subject of taxation with excise duty shall be:

- 1) sale of coal products within the territory of the country to a coal end consumer;
- 2) intra-Community acquisition of coal products by a coal end consumer;
- 3) import of coal products by a coal end consumer;
- 4) consumption of coal products by an intermediary coal entity;
- 5) consumption by a coal end consumer of coal products:
  - a) purchased under exemption referred to in Article 31a(1) for purposes other than those exempted under that provision, whereby the violation of conditions referred to in Article 31a(3) shall also be deemed such use, as well as sale, export, or intra-Community supply of coal products by the coal end consumer instead of their consumption for the purposes referred to in Article 31a(1),
  - b) acquired otherwise than by purchase,
  - c) if the entity who sold the coal products to the coal end consumer may not be determined, and as a result of a tax control, control proceedings, or tax proceedings tax was not found to be paid at the amount due.
- 6) consumption or sale of coal products acquired by way of a prohibited act charged with a penalty;
- 7) arising of losses of coal products.

2. The following shall be deemed to be sale of coal products:

- 1) sale of coal products within the meaning of the provisions of the Act of 23<sup>rd</sup> April 1964 – the Civil Code (Journal of Laws of 2014, item 121);
- 2) exchange of coal products within the meaning of the provisions of the Act of 23<sup>rd</sup> April 1964 – the Civil Code;
- 3) delivery of coal products in exchange for debts;
- 4) delivery of coal products in place of a pecuniary performance;
- 5) donation of coal products within the meaning of the provisions of the Act of 23<sup>rd</sup> April 1964 – the Civil Code;
- 6) delivery of coal products in exchange for performing a specific activity;



- 7) provision or use of coal products for the purposes of official entertainment or advertisement;
  - 8) provision of coal products by a taxpayer for the personal use of the taxpayer, partners, shareholders, members of a co-operative and members of their households, members of decision-making bodies of legal persons, members of an association, as well as employees hired by an association and former employees;
  - 9) consumption for the purposes of economic activity.
3. If a tax obligation arises towards coal products in connection with the performance of one of the activities subject to taxation with excise duty, no tax obligation arises due to another activity subject to taxation with excise duty, if the amount of excise duty is specified or declared at the amount due, unless otherwise set out in the provisions of this Act.
4. In case of selling coal products, the seller shall be obliged to determine whether they sell those products to an intermediary coal entity or a coal end consumer.
5. In case of selling coal products to an intermediary coal entity, the seller may request that entity to provide a confirmation of acceptance of a notification on the intention to start economic activity as an intermediary coal entity, and in case of refusal to do so, they may refuse to sell coal products at a price exclusive of excise duty.

#### **Article 9b. [Raw Tobacco as Subject of Taxation]**

1. In the case of raw tobacco, the subject of taxation with excise duty shall be:
- 1) <sup>16</sup> intra-Community acquisition of raw tobacco by an entity other than a tax warehouse keeper who uses the raw tobacco for production of manufactured tobacco, or an intermediary tobacco entity;
  - 2) <sup>17</sup> sale of raw tobacco to an entity other than a tax warehouse keeper who uses the raw tobacco for production of manufactured tobacco, or an intermediary tobacco entity, except for sale by an entity which makes intra-Community supply or export of raw tobacco with that sale;
  - 3) <sup>18</sup> import of raw tobacco by an entity other than a tax warehouse keeper who uses the raw tobacco for production of manufactured tobacco, or an intermediary tobacco entity;
  - 4) consumption of raw tobacco by an intermediary tobacco entity;
  - 5) consumption of raw tobacco by a tax warehouse keeper for purposes other than production of manufactured tobacco;
  - 6) <sup>19</sup> purchase or possession of raw tobacco by an entity other than a tax warehouse keeper who uses the raw tobacco for production of manufactured tobacco, an intermediary tobacco entity, or a farmer who produced the raw tobacco, if excise duty for that tobacco was not paid at the amount due and the entity who sold it may not be determined.
2. The activities referred to in Article 9a(2)(1)-(8) shall be deemed to be sale.

2a. <sup>20</sup> Sale of raw tobacco to a group of producers of raw tobacco established under the Act of 15<sup>th</sup> September 2000 on Agricultural Producers Groups and Associations Thereof and Amending Other Acts (Journal of Laws No. 88, item 983, as amended), hereinafter referred to as a “producers group”, and acquisition or possession of raw tobacco by a producers group shall not be taxed with excise duty, provided that:

- 1) the producers group holds a status of a taxpayer of tax on goods and services;
- 2) the producers group associates exclusively producers of raw tobacco;
- 3) the producers group acquires raw tobacco exclusively from its members and exclusively under a delivery contract;
- 4) persons authorised to represent the producers group under the certificate of formation have no criminal record for an offence against reliability of documents, property, economic circulation, turnover of money and securities, or for a fiscal offence.

3. If a tax obligation arises towards raw tobacco in connection with the performance of one of the activities referred to in paragraph (1), no tax obligation arises due to another activity subject to taxation with excise duty, if the amount of excise duty is specified or declared at the amount due.

4. In case of selling raw tobacco, the seller shall be obliged to determine whether they sell that raw tobacco to a tax warehouse keeper or an intermediary tobacco entity.

5. <sup>21</sup> In the situation referred to in paragraph (4), the seller of raw tobacco may request the purchaser to provide the authorisation for operating a tax warehouse or the decision on making an entry to the register referred to in Article 20a(4), and in case of refusal to do so by the purchaser, they may refuse to sell raw tobacco at a price exclusive of excise duty.

#### **Article 9c. [Gas Products as Subject of Taxation]**

1. In the case of gas products, the subject of taxation with excise duty shall be:

- 1) intra-Community acquisition of gas products by a gas end consumer;
- 2) sale of gas products to a gas end consumer;
- 3) import of gas products by a gas end consumer;
- 4) consumption of gas products by an intermediary gas entity;
- 5) consumption by a gas end consumer of gas products:
  - a) acquired otherwise than by purchase,
  - b) if the entity which sold the gas products to the gas end consumer may not be determined, and as a result of a tax control, control proceedings, or tax proceedings excise duty was not found to be paid at the amount due,
  - c) purchased under exemption referred to in Article 31b(1)-(4) for purposes other than those exempted under that provision, whereby the violation of the condition referred to in Article 31b(5)-(7) or (9) shall also be deemed such consumption, as well as sale, export, or intra-Community supply of gas products by the gas end consumer instead of their consumption for the purposes referred to in Article 31b(1)-(4).

2. The activities referred to in Article 9a(2)(1)-(8) shall be deemed to be sale of gas products to a gas end consumer.
3. If a tax obligation arises towards gas products in connection with the performance of one of the activities referred to in paragraph (1), no tax obligation arises due to another activity subject to taxation with excise duty, if the amount of excise duty is specified or declared at the amount due.
4. In case of selling gas products, the seller shall be obliged to determine whether they sell those products to an intermediary gas entity or a gas end consumer.
5. The seller of gas products may request the purchaser to provide a confirmation of acceptance of a notification on the intention to start economic activity as an intermediary gas entity, and in case of refusal to do so, they may refuse to sell gas products at a price exclusive of excise duty.

#### **Article 10 [Arising of Tax Obligation]**

1. A tax obligation shall arise at the date of performance of the activity or occurrence of the fact subject to taxation with excise duty, unless otherwise set out by this Act.
  - 1a. A tax obligation due to sale of coal products within the territory of the country shall arise at the date of supply of the coal products, including to a carrier, and in the cases referred to in Article 9a(2)(2)-(9) at the date of performance of those activities.
  - 1b. If the sale of coal products is confirmed with an invoice, the tax obligation shall arise at the date of the invoice issue, no later than on the 7<sup>th</sup> day of the date of supply of the coal products.
2. A tax obligation due to import of excise goods shall arise at the date when the customs debt within the meaning of the provisions of the customs law arose.
3. A tax obligation due to intra-Community acquisition of excise goods by a registered consignee shall arise at the date when the excise goods are placed in the place of receipt of the excise goods specified in the proper authorisation.
4. <sup>22</sup> A tax obligation due to intra-Community acquisition of excise goods outside the excise duty suspension arrangement made for the purpose of economic activity conducted by the taxpayer within the territory of the country shall arise at the date of receipt of the excise goods by the taxpayer, no later however than on the 7<sup>th</sup> day of the date of the dispatch specified in the simplified accompanying document or of the date of the commercial document issue, if the excise goods are moved based on a commercial document.
5. A tax obligation due to intra-Community acquisition of excise goods other than those specified in Annex No. 2 hereto covered with excise duty rate other than zero rate, except for coal products, shall arise at the date of receipt of those goods by the taxpayer.

6. A tax obligation due to intra-Community acquisition of excise goods with excise duty paid for commercial purposes referred to in Article 34 made by a natural person shall arise on the date of their movement to the territory of the country.

7. <sup>23</sup> A tax obligation due to intra-Community acquisition of excise goods outside the excise duty suspension arrangement made through a tax representative referred to in Article 79(1) shall arise on the date of receipt of the excise goods supplied by the recipient on the territory of the country.

8. A tax obligation due to sale of excise goods referred to in Article 8(2)(3) and Article 8(5) shall arise on the date of their supply to the purchaser.

9. If the sale referred to in Article 8(2)(3) is to be confirmed with an invoice, the tax obligation shall arise on the date of the invoice issue, no later however than on the 7<sup>th</sup> day of the date of supply of the excise good.

10. A tax obligation due to acquisition or possession of the excise goods referred to in Article 8(2)(4) shall arise on the date of their acquisition or entry into possession of those goods, with prejudice to paragraph (11).

11. In the case of central government bodies which came into possession of the excise goods specified in Article 8(2)(4) which under separate provisions are subject to activities specified in the provisions on administrative enforcement proceedings performed by those bodies, the tax obligation shall arise on the date of consumption or sale of those goods thereby.

12. <sup>24</sup> Upon request of the purchaser, the taxpayer of excise duty shall demonstrate on the invoice or in a declaration appended thereto the amount of excise duty included in the price of the excise goods specified on that invoice.

13. <sup>25</sup> The declaration referred to in paragraph (12) should include:

- 1) the data of the taxpayer, including their (business) name and the address of the seat or place of residence, and their tax identification number (NIP) or statistical identification number (REGON);
- 2) the amount of excise duty included in the price of excise goods specified on the invoice;
- 3) the date and place of making the declaration;
- 4) a legible signature of the submitter.

## **Article 11 [Arising of Tax Obligation – Electricity]**

1. In the case of electricity, the tax obligation shall arise:

- 1) on the date of intra-Community acquisition of electricity by an end consumer;
- 2) upon the moment of supply of electricity to an end consumer in the case of sale of electricity within the territory of the country;
- 3) on the date of consumption of electricity in the cases referred to in Article 9(1)(3), (4) and (6);

4) on the date on which customs debt arises, in the case of import of electricity by an end consumer.

2. The supply of electricity referred to in paragraph (1)(2) to an end consumer shall entail the issue by the taxpayer of an invoice or another document demonstrating the payment of the amount due for the electricity sold by the taxpayer.

#### **Article 11a. [Arising of Tax Obligation – Raw Tobacco]**

In the case of raw tobacco, the tax obligation shall arise on:

- 1) the date of intra-Community acquisition of raw tobacco;
- 2) the date of supply of raw tobacco in the case of its sale;
- 3) the date of consumption of raw tobacco;
- 4) <sup>26</sup> the date of purchase or entry into possession of raw tobacco by an entity other than a tax warehouse keeper, an intermediary tobacco entity, a producers group, or a farmer who produced the raw tobacco, if excise duty for the raw tobacco was not paid at the amount due and the entity who sold it may not be determined;
- 5) the date on which customs debt arises, in the case of import of raw tobacco.

#### **Article 11b. [Arising of Tax Obligation – Gas Products]**

1. In the case of gas products, the tax obligation shall arise on:

- 1) the date of intra-Community acquisition of gas products by a gas end consumer;
- 2) the date of supply of gas products to a gas end consumer, in the case of their sale on the territory of the country;
- 3) on the date on which customs debt arises, in the case of import of gas products by a gas end consumer;
- 4) on the date of consumption of gas products in the cases referred to in Article 9c(1)(4) or (5).

2. If the sale of gas products is confirmed with an invoice or another document demonstrating the payment of the amount due for the gas products sold by the taxpayer, the supply of the gas products to the gas end consumer shall entail the issue of the invoice or the other document by the taxpayer.

#### **Article 12 [Special Arising of Tax Obligation]**

If the date on which the tax obligation arises due to an activity or fact subject to taxation with excise duty may not be determined, the date of the tax obligation shall be the date on which

an entitled tax authority or tax control authority detected the performance of the activity or the occurrence of the fact.

## **Chapter 2**

### **Excise Duty Taxpayers. Competence of Tax Authorities**

#### **Article 13 [Excise Duty Taxpayers]**

1. The excise duty taxpayer shall be a natural person, a legal person, and an organisational unit without legal personality who performs activities subject to taxation with excise duty or towards whom a fact subject to taxation with excise duty occurred, including an entity:

- 1) which acquires or possesses excise goods outside the excise duty suspension arrangement, if excise duty was not paid for those goods at the amount due, and as a result of a tax control, control proceedings, or tax proceedings tax was not found to be paid;
- 2) which is an end consumer consuming electricity, if excise duty for that electricity was not paid at the amount due, and the entity which sold that electricity to the end consumer may not be determined;
- 2a) <sup>27</sup> which purchases or possesses raw tobacco and is not a tax warehouse keeper, an intermediary tobacco entity, a producers group, or a farmer who produced the raw tobacco, if excise duty for the raw tobacco was not paid at the amount due and the entity which sold it may not be determined;
- 3) by whom losses or total destruction of the excise goods referred to in Article 2(1)(20) arises, also if that entity is not the owner of those excise goods;
- 4) which is a tax representative;
- 5) which is a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee – due to intra-Community acquisition of excise goods for another entity;
- 6) which is a registered consignor, if they dispatch excise goods under the excise duty suspension arrangement from the place of importation;
- 7) which consumes or sells coal products acquired by way of a prohibited act charged with a penalty;
- 8) which is an intermediary tobacco entity consuming raw tobacco;
- 9) which is a tax warehouse keeper consuming raw tobacco for purposes other than production of manufactured tobacco;
- 10) which is an intermediary coal entity consuming coal products;

- 11) which is a coal end consumer – in the case referred to in Article 9a(1)(5);
- 12) which is an intermediary gas entity consuming gas products;
- 13) which is a gas end consumer – in the case referred to in Article 9c(1)(5).

1a. <sup>28</sup> The taxpayer due to the production of cigarettes referred to in Article 99(1a) which violates Article 47 shall be deemed to be a natural person, a legal person, and an organisational unit without legal personality who produces cigarettes, and any other person involved in the production thereof.

1b. <sup>29</sup> If the tax obligation due to the production of cigarettes referred to in Article 99(1a) which violates Article 47 burdens more than one taxpayer, those taxpayers shall be jointly and severally liable for the tax obligation.

2. The taxpayer shall also be an entity which is not an importer, if they are burdened with the obligation to pay duty.

3. The taxpayer due to the exit of excise goods which do not belong to the tax warehouse keeper of a tax warehouse from that warehouse outside the excise duty suspension arrangement shall be deemed to be an entity which is the owner of those goods and which obtained the authorisation referred to in Article 54(1) from the competent director of customs office.

4. If a tax obligation burdens more than one taxpayer due to the performance of the activity or occurrence of the fact referred to in Article 8(1)(3) and Article 8(2), (3) and (5) the subject of which are the same excise goods, the payment of excise duty for those goods by one of those taxpayers shall make the tax obligations of the other taxpayer expire.

5. The taxpayer in the case of intra-Community acquisition of:

- 1) electricity by an end consumer,
- 2) gas products by a gas end consumer

- from a foreign entity having no registered address, place of residence, or fixed place of establishment within the territory of the country shall be the representing entity designated by the foreign entity.

5a. <sup>30</sup> In the case of conducting economic activity involving raw tobacco by the foreign entrepreneur referred to in Article 20d(1)(c), and the arising of a tax obligation for the raw tobacco, the taxpayer of excise duty shall be the representing entity of the foreign entrepreneur.

6. In case of:

- 1) failing to designate a representing entity, or
- 2) refusal to accept the registration application of the representing entity by the competent director of customs office, or

3) failing to provide a copy of the invoice referred to in Article 24(1)(1) by the end consumer to the representing entity within the specified time limit

- the taxpayer due to intra-Community acquisition of electricity from a foreign entity having no seat, place of residence or fixed place of establishment within the territory of the country shall be the end consumer who made the intra-Community acquisition of electricity.

6a. In case of:

1) failing to designate a representing entity, or

2) refusal to accept the registration application of the representing entity by the competent director of customs office, or

3) failing to provide a copy of the invoice referred to in Article 24b(1)(1) by the end gas consumer to the representing entity within the specified time limit

- the taxpayer due to the intra-Community acquisition of gas products from a foreign entity having no seat, place of residence or fixed place of establishment within the territory of the country shall be the end gas consumer who made the intra-Community acquisition of gas products.

7. (repealed).

#### **Article 14 [Competence of Tax Authorities]**

1. The tax authorities competent in excise matters shall be the director of customs office and the director of customs chamber.

1a. <sup>31</sup> The tax authority competent for the BEI shall be the director of customs chamber.

2. The tasks regarding excise duty within the territory of the country shall be performed by directors of customs offices and directors of customs chambers appointed by the minister competent for public finance.

3. The territorial jurisdiction of the director of customs office and the director of customs chamber shall be determined based on the place of performance of the activity or occurrence of the fact subject to excise duty, with prejudice to paragraphs (4)-(5b) and (7)-(10).

4. <sup>32</sup> If the activities subject to taxation with excise duty are performed or the facts subject to excise duty occur within the area of territorial jurisdiction of two or more tax authorities, the territorial jurisdiction, with prejudice to paragraphs (4a)-(5), shall be determined for:

1) legal persons and organisational units without legal personality, based on the address of their seat;

2) natural persons, based on their place of residence.

4a. <sup>33</sup> If the activities subject to taxation with excise duty are performed or the facts subject to excise duty occur within the area of territorial jurisdiction of two or more tax authorities, the



tax authority having the territorial jurisdiction, with prejudice to paragraphs (5)-(7) and (9), may be one of those authorities chosen by the taxpayer and specified in the declaration submitted to the chosen tax authority and the tax authority having jurisdiction over the taxpayer as specified in paragraph (4).

4b. <sup>34</sup> If the declaration referred to in paragraph (4a) is submitted by the taxpayer following the commencement of their activity, the tax authority specified in that declaration shall be the authority having territorial jurisdiction starting as of the first day of the second month following the month in which the declaration is submitted.

4c. <sup>35</sup> If in the period of the last 12 months, counting from the day of performing the last activity subject to taxation with excise duty within the area of territorial jurisdiction of the tax authority chosen by the taxpayer as specified in paragraph (4a) or from the day of occurrence of the last fact subject to taxation with excise duty within that area, the taxpayer performed no such activities within that area or no such facts concerning that taxpayer occurred within that area, the taxpayer shall be obliged to submit within 14 days of the date on which that period expires a declaration on non-performance of such activities within that area or non-occurrence of such facts within that area. The declaration shall be submitted to the tax authority chosen as specified in paragraph (4a) and to the tax authority competent for the taxpayer under paragraph (4).

4d. <sup>36</sup> Should the declaration referred to in paragraph (4c) be submitted, the territorial jurisdiction shall be determined again pursuant to paragraphs (3), (4), or (4a). The provision of paragraph (4b) shall apply accordingly.

4e. <sup>37</sup> The tax authority chosen by the taxpayer as specified in paragraph (4a) to which no tax returns, information, or other documents to be submitted under this Act, or the declaration referred to in paragraph (4c) were submitted by the taxpayer within the period of the last 12 months, counting from the date of submitting by that taxpayer the declaration referred to in paragraph (4a) or from the date of submitting for the last time by that taxpayer a tax return, information or other documents to be submitted under this Act to that authority, shall request that taxpayer to submit within 14 days of the date of receipt of the request:

- 1) information on performance of activities subject to taxation with excise duty or on occurrence of facts subject to excise duty within that period within the area of the territorial jurisdiction of that tax authority; or
- 2) declaration on non-performance of activities subject to taxation with excise duty or on non-occurrence of facts subject to excise duty within that period within the area of the territorial jurisdiction of that tax authority.

4f. <sup>38</sup> In case of failing to submit the information or declaration referred to in paragraph (4e), or submitting by the taxpayer the declaration referred to in paragraph (4e)(2), the territorial jurisdiction shall be determined as specified in paragraph (3) or (4), starting as of the first day of the second month following the month in which the time limit to submit the said information or declaration expired or in which the declaration referred to in paragraph (4e)(2) was submitted. The jurisdiction determined as specified in paragraph (3) or (4) may be

determined again under paragraph (4a). The provision of paragraph (4b) shall apply accordingly.

5. In the situation of:

- 1) determining the levels for acceptable losses of excise goods or acceptable levels of consumption of excise goods,
  - 2) moving excise goods under the excise duty suspension arrangement,
  - 3) notifying the director of customs office by a tax warehouse keeper on the intention to remove excise goods from the tax warehouse,
  - 4) (repealed);
- the territorial jurisdiction shall be determined based on the place of performing the activities subject to taxation with excise duty or of occurrence of the facts subject to excise duty with which the activities referred to in sub-paragraphs (1)-(3) are connected.

5a. The territorial jurisdiction of a tax authority in the matters of recording charge or release from charge of the general guarantee shall be determined based on the place of performance of the activity or occurrence of the fact which are the basis for that record.

5b. <sup>39</sup> In case when the tax liability or the obligation to pay petrol fee referred to in Article 37h(1) of the Act of 27<sup>th</sup> October 1994 on Toll Motorways and National Road Fund (Journal of Laws of 2012, item 931, as amended), hereinafter referred to as the “petrol fee”, expires due to the payment of that tax liability or that petrol fee, the authority competent to record the release of the general guarantee from charge shall be the director of the customs office to which the taxpayer submits the tax return.

5c. <sup>40</sup> Upon request of the taxpayer the release of the general guarantee from charge due to the payment of the tax liability or the petrol fee may be recorded by the director of customs office other than the one specified in paragraph (5b), provided that they have the information that the tax liability or the petrol fee are paid or the taxpayer provides them with documents confirming that payment.

6. <sup>41</sup> In the cases referred to in paragraphs (4)-(4f), upon request of the competent director of customs office or the competent director of customs chamber, the tasks of verification, tax control, or tax proceedings specified in the request shall be performed by the director of customs office or the director of customs chamber respectively within the area of territorial jurisdiction of whom the activities subject to taxation with excise duty are performed or the facts subject to excise duty occur.

7. In the case of import or dispatch of excise goods under the excise duty suspension arrangement from the place of importation referred to in Article 8(1)(6), the tax authorities for the matters of excise duty shall be the director of customs office and the director of customs chamber who under the provisions of the customs law are competent for calculating and accounting for the amount of import duties arising out of customs debt.

8. In the case of natural persons who make intra-Community acquisition, except for intra-Community acquisition within economic activity, the tax authorities with territorial

jurisdiction shall be the director of customs office and the director of customs chamber having jurisdiction over the place of residence of those persons.

9. <sup>42</sup> The tax authorities competent to decide in the matters of excise duty refund referred to in Article 42(4) and (8) and Article 82(1), (2) and (2e) shall be the director of customs office to which the tax return for that excise duty was submitted or who issued the decision determining the amount of that excise duty, and the director of customs chamber competent in the matters of excise duty for that director of customs office.

9a. <sup>43</sup> The director of the competent customs chamber shall disburse the amount of the excise duty refund upon request of the tax authority which determined the amount of the refund.

10. If the competence may not be determined as specified in paragraphs (3)-(5) and (7)-(9), the competent tax authority shall be the Director of the I Customs Office in Warsaw and the Director of the Customs Chamber in Warsaw.

11. <sup>44</sup> The minister competent for public finance shall determine with a regulation:

1) the list of customs offices and customs chambers whose directors are competent for performing tasks concerning excise duty within the territory of the country, and the territorial area of their activity, taking into account the number of taxpayers conducting economic activity within the given area,

2) the competent customs chamber(s) to the bank account of which the payment of excise duty, excise duty prepayment and daily payments are to be made, and from the bank account of which the disbursement of the excise duty refund is to be made, as well as shall determine the territorial area of their activity in that matter

– taking into account the need to provide for efficient collection and refund of excise duty.

12. <sup>45</sup> The minister competent for public finance shall appoint with a regulation the director(s) of customs chambers competent for performing tasks referred to in paragraph (1a) and the director of customs chamber competent for performing those tasks as an appellate body, taking into account the need to provide for efficient performance of the tasks and uniformity of procedure.

13. <sup>46</sup> The minister competent for public finance shall determine with a regulation the list of documents confirming the payment of tax liability and the petrol fee referred to in paragraph (5c), taking into account the need to provide for proper application of excise guarantee.

## **Article 15 [Competence of Tax Authorities in Matters of Excise Stamps]**

1. The authorities competent for excise stamps shall be the director of customs office and the director of customs chamber appointed by the minister competent for public finance, hereinafter referred to as the “competent director of customs office for the matters of excise stamps” and the “competent director of customs chamber for the matters of excise stamps” respectively, the territorial jurisdiction of whom shall be determined based on the address of the seat or place of residence of the entity obliged to mark excise goods with excise stamps.

1a. <sup>47</sup> The director of the competent customs chamber shall make disbursements due to the refund of:

- 1) the amount constituting the value of tax excise stamps,
- 2) the amount covering the costs of production of excise stamps,
- 3) the amounts due for legalisation excise stamps,
- 4) the amounts due for legalisation excise stamps less the costs of their production
  - upon request of the tax authority which issued the decision on refusal to issue or sell excise stamps or entitled to collect excise stamps in case of losses or return of those excise stamps.

2. If the territorial jurisdiction may not be determined as specified in paragraph (1), the competent director of customs office for the matters of excise stamps and the competent director of customs chamber for the matters of excise stamps shall be the Director of the II Customs Office in Warsaw and the Director of the Customs Chamber in Warsaw.

3. <sup>48</sup> The minister competent for public finance shall determine with a regulation:

- 1) the list of customs offices and customs chambers whose directors are competent for performing tasks concerning excise stamps, and the territorial area of their activity, taking into account the territorial distribution of entities obliged to mark excise goods with excise stamps,
- 2) the competent customs chamber(s) to the bank account of which or from the bank account of which the following is made respectively:
  - a) payment of
    - the amount constituting the value of tax excise stamps,
    - the amount covering the costs of production of excise stamps,
    - the amounts due for legalisation excise stamps,
  - b) disbursement due to the refund of amounts (due) referred to in item (a), and amounts due referred to in paragraph (1a)(4)
    - and shall determine the territorial area of their activity in those matters, taking into account the need for efficient settlement of amounts constituting the value of tax excise stamps, the amounts covering the costs of production of excise stamps and the amounts due for legalisation of excise stamps.

### **Chapter 3**

#### **Registration of Entities**

## **Article 16 [Registration Application. Notification of Intention to Start Economic Activity]**

1. An entity conducting economic activity shall be obliged, before the day of performing the first activity subject to taxation with excise duty or the first activity with the use of excise goods exempted from excise duty due to their intended use, to submit a registration application to the competent director of customs office.
2. The registration application should include information on the entity and the economic activity conducted thereby, in particular the given name and surname or business name of the entity, the address of the seat or place of residence, and specification of the economic activity type, and in the case of economic activity with the use of excise goods exempted from excise duty, also the addresses of places of establishment and specification of the nature and expected monthly average quantity of the excise good consumed.
3. <sup>49</sup> The competent director of customs office, without undue delay, and no later than within 7 days of the date of acceptance of the registration application, shall confirm in writing its acceptance. The confirmation should include information on the registered entity and the economic activity involving excise goods conducted thereby, and in particular the given name and surname or business name of the entity, the place of residence or the address of the seat, the tax identification number (NIP) or the statistical identification number (REGON), and the nature of excise goods which the economic activity conducted by the entity involves.
- 3a. <sup>50</sup> An entity intending to conduct economic activity as an intermediary coal entity or an intermediary gas entity, instead of submitting the registration application referred to in paragraph (1) shall be obliged to notify the competent director of customs office thereof in writing before the day of starting that activity. The notification should include information on that entity and the economic activity conducted thereby, and in particular the given name and surname or business name of the entity, the place of residence or the address of the seat, the tax identification number (NIP) or the statistical identification number (REGON) or a different identification number used in the country of the place of residence or the seat, and the type of the economic activity.
- 3b. <sup>51</sup> The competent director of customs office shall without undue delay confirm in writing the acceptance of the notification of intention to start economic activity as an intermediary coal entity or an intermediary gas entity. The confirmation should include the information referred to in paragraph (3a).
- 3c. <sup>52</sup> The minister competent for public finance or a competent authority shall publish without undue delay the current list of intermediary coal entities and intermediary gas entities on the Public Information Bulletin website of the office providing service to the minister competent for public finance, which list shall include the following information: the given name and surname or business name and the place of residence, if it is the same as the address of the place of establishment, or the address of the seat, the tax identification number (NIP) or the statistical identification number (REGON) or a different identification number used in the country of place of residence or seat of the entity, and the type of the economic activity.

4. <sup>53</sup> If the information included in the registration application or the notification of intention to start economic activity as an intermediary coal entity or an intermediary gas entity change, the entity shall be obliged to report that change to the competent director of customs office within 7 days of the date when the change occurred.

4a. <sup>54</sup> The intermediary coal entity and intermediary gas entity are obliged to notify the competent director of customs office of the cessation of the economic activity as an intermediary coal entity or an intermediary gas entity within 7 days of the date when the activity ceased to be conducted.

5. <sup>55</sup> (repealed).

6. <sup>56</sup> (repealed).

7. <sup>57</sup> The provisions of paragraphs (1)-(4a) shall not apply to entities conducting economic activity with the use excise goods exempted from excise duty due to their intended use having no place of residence or place of establishment within the territory of the country.

7a. The provision of paragraph (1) shall not apply to entities generating electricity from generating units of the total capacity not exceeding 1 MW which is not supplied to installations connected and cooperating with each other used for transmission of that electricity, but is consumed by that entity, provided that excise duty at the amount due was paid on energy products used to generate that electricity.

8. <sup>58</sup> (repealed).

#### **Article 16a.**

<sup>59</sup> (repealed).

#### **Article 17 [Representing Entity]**

1. The representing entity referred to in Article 13(5) may be only an entity having its seat within the territory of the country, meeting the conditions referred to in Article 48(1)(2)-(4), and which submitted a registration application as specified in Article 16. The representing entity should indicate in the registration application also the foreign entity represented thereby.

2. The competent director of customs office shall refuse to accept the registration application of a representing entity which does not meet the conditions referred to in Article 48(1)(2)-(4).

3. An end consumer shall be obliged to send the copies of invoices referred to in Article 24(1)(1) to the representing entity within 14 days of the date of their receipt.

3a. A gas end consumer shall be obliged to send the copies of invoices referred to in Article 24b(1)(1) to the representing entity within 14 days of the date of their receipt.

4. The competent director of customs office shall remove the representing entity from the register in case of violating any of the conditions referred to in Article 48(1)(2)-(4). Article 52(3) shall apply accordingly.

## **Article 18 [Register of Excise Duty Taxpayers]**

1. The competent director of customs office shall keep a register of the entities referred to in Article 16(1). The register shall contain the information included in the registration applications of those entities.
2. Upon request of a stakeholder, the competent director of customs office shall be obliged to issue a certificate stating whether a given entity is a registered entity. A stakeholder may be both the regulated entity itself and another entity having legal interest in acquiring information on the registration.
- 2a. <sup>60</sup> The certificate referred to in paragraph (2) shall include information on the registered entity and the economic activity involving excise goods conducted thereby, and in particular the given name and surname or business name of the entity, the place of residence or the address of the seat, and the nature of excise goods which the economic activity conducted by that entity involves.
3. The minister competent for public finance shall keep records in electronic form including:
  - 1) the identification data of tax warehouse keepers, registered consignees, registered consignors, and intermediary entities, the addresses of their seats or places of residence, and their email addresses;
  - 2) the type of economic activity conducted by the entities referred to in sub-paragraph (1), and the nature of customs goods which that activity involves;
  - 3) the addresses of tax warehouses, places of receipt of excise goods by registered consignees, and places where the activity of intermediary entities is conducted, and their email addresses;
  - 4) the excise numbers of tax warehouses, tax warehouse keepers, registered consignees, registered consignors, as well as those of intermediary entities.
4. The data from the records referred to in paragraph (3)(4) shall be confirmed upon request of stakeholders or made available to competent bodies of European Union Member States, and are used by the System.

## **Article 19 [Notification of Cessation of Taxed Activities]**

1. If an entity ceased to perform the activities referred to in Article 16(1), it is obliged to submit within 7 days a notification of cessation of those activities to the competent director of customs office.
2. Should the rights and obligations of a registered entity be taken over under separate provisions and the economic activity cease to be conducted, the notification of cessation of economic activity shall be submitted by the successor of the registered entity or other persons who took over its rights and obligations, within the period specified in paragraph (1).
3. The notifications referred to in paragraphs (1) and (2) shall be the basis to remove the entity from the register by the competent director of customs office.

4. In case of failure to submit the notifications as specified in paragraphs (1) and (2), the competent director of customs office who made the registration shall remove the registered entity from the register ex officio.
5. The competent director of customs office shall notify the following entities of the removal from the register:
  - 1) the registered entity, unless as a consequence of verification activities undertaken it turns out that the entity does not exist;
  - 2) the Material Reserves Agency, in the case of registered entities obliged to establish and keep mandatory reserves of oil or fuels under the provisions of the Act of 16<sup>th</sup> February 2007 on Reserves of Oil, Petroleum Products, and Natural Gas, and Procedures in Situations of Risk to Fuel Safety of State and Oil Market Distortions (Journal of Laws of 2012, item 1190 and of 2013, item 984).
6. <sup>61</sup> (repealed).

#### **Article 20 [Delegation of Legislative Powers to Determine Form Templates]**

The minister competent for public finance shall determine with a regulation the template of the registration application, the template of the confirmation of registration application acceptance, and the template of the notifications referred to in Article 19(1) and (2), taking into account the need to provide tax authorities with information on taxpayers or entities performing activities involving excise goods.

### **Chapter 3a**

#### **<sup>62</sup> Registration of Intermediary Tobacco Entities**

#### **Article 20a. [Entry into Register of Intermediary Tobacco Entities]**

1. It shall require an entry into the register of intermediary tobacco entities to conduct economic activity as an intermediary tobacco entity.
2. The minister competent for public finance or a competent authority shall publish the current register of intermediary tobacco entities without undue delay.
3. The register of intermediary tobacco entities shall be published on the Public Information Bulletin website of the office providing service to the minister competent for public finance.
4. The entry into the register of intermediary tobacco entities, the amendment thereof, and the removal of the intermediary tobacco entity therefrom shall be made based on the decision of the competent director of customs office.
5. The decisions referred to in paragraph (4) shall be enforceable immediately.



6. Information about the issue of the decisions referred to in paragraph (4) shall be provided forthwith by the competent director of customs office to the minister competent for public finance or a competent authority in order to make the entry of the intermediary tobacco entity to the register of intermediary tobacco entities, amend the entry in the register of intermediary tobacco entities, or remove the intermediary tobacco entity from the register.

7. The decision on:

- 1) the entry to the register of intermediary tobacco entities – shall be issued upon request submitted according to the template specified;
- 2) the amendment of the entry to the register of intermediary tobacco entities – shall be issued upon request submitted according to the template specified or ex officio;
- 3) the removal of the intermediary tobacco entity from the register of intermediary tobacco entities – shall be issued upon request or ex officio.

8. The entry to the register of intermediary tobacco entities should include information on the entity and the economic activity conducted thereby referred to in Article 20d(1), except for the place of residence, if it is not the same as the address of the place of establishment.

#### **Article 20b. [Registered Office of Intermediary Tobacco Entity]**

1. The entry to the register of intermediary tobacco entities may concern an entity having the place of residence or the seat within the territory of the country or foreign entrepreneurs referred to in Article 20d(1)(b) and (c).
2. The foreign entrepreneur referred to in Article 20d(1)(c) intending to conduct economic activity involving raw tobacco within the territory of the country shall be obliged to appoint a representing entity within the territory of the country for the purposes of excise duty.

#### **Article 20c. [Representing Entity of Foreign Entrepreneur]**

1. The entity representing the foreign entrepreneur may be exclusively an entity having its seat within the territory of the country, meeting the conditions referred to in Article 20e(1)(1) and (2), and which submitted a registration application as specified in Article 16. The entity representing the foreign entrepreneur should indicate in the registration application also the foreign entity represented thereby.
2. The competent director of customs office shall refuse to accept the registration application of an entity representing the foreign entrepreneur which does not meet the conditions referred to in Article 20e(1)(1) and (2).
3. The competent director of customs office shall remove the entity representing the foreign entrepreneur from the register referred to in Article 18 in case of violating any of the conditions referred to in Article 20e(1)(1) and (2).
4. Economic activity involving raw tobacco conducted by a foreign entrepreneur referred to in Article 20d(1)(c) shall be deemed for the purposes of excise duty to be economic activity conducted by the representing entity of the foreign entrepreneur.

#### **Article 20d. [Request for Entry to Register of Intermediary Tobacco Entities]**

A request for entry to the register of intermediary tobacco entities should include the following:

- 1) information on the entity and the economic activity conducted thereby, including:
  - a) in the case of a domestic entity: the given name and surname or business name of the entity, the place of residence or the address of the seat, the place and address of conducting the activity involving raw tobacco, the place and address of storing the raw tobacco within the territory of the country, the number in the National Court Register or the information on the entry in the Central Registration and Information on Business, the tax identification number (NIP) or the statistical identification number (REGON),
  - b) in the case of a foreign entrepreneur having a branch with the seat within the territory of the country established on the terms and conditions set out in the Act of 2<sup>nd</sup> July 2004 on Freedom of Economic Activity:
    - the given name and surname or the business name of the entity, the place of residence or the address of the seat thereof, the identification number used in the State of place of residence or registered address, and the information on the economic activity conducted thereby,
    - the business names of branches with seat on the territory of the country within which the foreign entrepreneur conducts economic activity within the territory of the country, the addresses of their seats, the number in the National Court Register, the tax identification number (NIP) or the statistical identification number (REGON),
    - the place and address of conducting the activity involving raw tobacco within the territory of the country and the place and address of storing the raw tobacco within the territory of the country,
    - the given names and surnames of persons authorised to represent the branch of the foreign entrepreneur and their addresses,
  - c) in the case of a foreign entrepreneur having no branch with the seat within the territory of the country established on the terms and conditions set out in the Act of 2<sup>nd</sup> July 2004 on Freedom of Economic Activity:
    - the given name and surname or the business name of the entity, the place of residence or the address of the seat thereof, the identification number used in the State of place of residence or the seat, and the information on the economic activity conducted thereby,
    - the given name and surname or the business name of the entity representing the foreign entrepreneur, the place of residence or the address of the seat thereof, the number in the National Court Register, the tax identification number (NIP) or the statistical identification number (REGON),
    - the place and address of conducting the activity involving raw tobacco within the territory of the country and the place and address of storing the raw tobacco within the territory of the country,

d) information on the type of economic activity involving raw tobacco, including whether the entity intends to do the following with the raw tobacco:

- sell it within the territory of the country,
- export it,
- make intra-Community supply thereof,
- make intra-Community acquisition thereof,
- import it,
- consume it,
- process it, with information in what does the processing consist;

2) proposed excise guarantee.

#### **Article 20e. [Conditions of Entry to Register of Intermediary Tobacco Entities]**

1. The condition of entry to the register of intermediary tobacco entities shall be:

- 1) for the persons who manage the activity of the entity or the persons authorised to represent the branch of a foreign entrepreneur with the seat within the territory of the country to have no criminal record for an offence against reliability of documents, property, economic circulation, turnover of money and securities, or for a fiscal offence;
- 2) for the entity or the branch of a foreign entrepreneur with the seat within the territory of the country to have no arrears in customs and taxes constituting the revenue of the State budget and contributions for social security and health care, and for the entity or the branch not to be subject to enforcement, liquidation or insolvency proceedings;
- 3) for the entity which submitted the request for entry to the register of intermediary tobacco entities, and in the case of a foreign entrepreneur referred to in Article 20d(1)(c) for the entity representing the foreign entrepreneur to provide the excise guarantee.

2. The register of intermediary tobacco entities may not accept the entry of an entity for which:

- 1) any of the authorisations referred to in Article 84(1) are revoked due to the violation of the provisions of law;
- 2) a concession or authorisation for conducting economic activity are revoked;
- 3) a decision on the ban on conducting regulated activity involving excise goods is issued.

3. While assessing whether the conditions referred to in paragraph (2) are met, the period of the last 3 years shall be taken into account, counting from the date of submitting the request for entry to the register of intermediary tobacco entities.

4. The request for entry to the register of intermediary tobacco entities shall be appended with documents confirming the information included in the request and that the conditions for making the entry to the register of intermediary tobacco entities are met.

**Article 20f. [Decision on Making Entry to Register of Intermediary Tobacco Entities. Register Data Update]**

1. The decision on making the entry to the register of intermediary tobacco entities shall include information on the tobacco entity and the activity conducted thereby, and the form and expiry date of the excise guarantee, and in the case of a foreign entrepreneur also information on the branches of that entrepreneur within the territory of the country and persons authorised to represent those branches or the entity representing the foreign entrepreneur.
2. The intermediary tobacco entity shall be obliged to notify the competent director of customs office of:
  - 1) planned changes of information included in the request for entry to the register of intermediary tobacco entities or in the decision on making the entry to that register, before the changes are made;
  - 2) other than planned changes of information included in the request for entry to the register of intermediary tobacco entities or in the decision on making the entry to that register, immediately following the changes, no later however than within 3 days of the day on which the changes occurred.
3. The notification referred to in paragraph (2) shall be appended with documents confirming the information contained therein.
4. The notification referred to in paragraph (2) shall constitute a request for amending the entry to the register of intermediary tobacco entities. The provision of paragraph (2) shall apply accordingly to the amendments of information included in the request for amending the entry to the register of intermediary tobacco entities.
5. The intermediary tobacco entity or the successor thereof shall be obliged to notify the competent director of customs office of the cessation of the economic activity by the intermediary tobacco entity immediately following the cessation of that activity, no later however than within 3 days of the date when the activity ceased to be conducted.
6. The notification referred to in paragraph (5) shall constitute a request for removing the intermediary tobacco entity from the register of intermediary tobacco entities.
7. A change consisting in the entry, under the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance, of a successor or a transformed entity into the rights or obligations provided for in the provisions of the tax law of the intermediary tobacco entity shall not require the removal of the previous intermediary tobacco entity from the register of intermediary tobacco entities, nor the entry to that register of its successor or the transformed entity. Such a change requires amending the entry in the register.

**Article 20g. [Refusal to Make Entry to Register of Intermediary Tobacco Entities]**

The competent director of customs office shall issue the decision on refusal to make the entry to the register of intermediary tobacco entities, if:

- 1) false information is provided in the request for entry to the register of intermediary tobacco entities, in particular concerning the conducting of economic activity specified in the request by the entity at the address specified thereby;
- 2) the conditions for making the entry to the register of intermediary tobacco entities are not met by the entity.

**Article 20h. [Removal of Entity from Register of Intermediary Tobacco Entities]**

1. The competent director of customs office shall issue ex officio the decision on removal of an intermediary tobacco entity from the register of intermediary tobacco entities, if:

- 1) the intermediary tobacco entity or the entity representing a foreign entrepreneur conducts the economic activity not in conformity with the provisions of the tax law or the decision on making the entry to the register of intermediary tobacco entities, in particular by:
  - a) sale of raw tobacco not marked with excise stamps to an entity other than a tax warehouse keeper which consumes the raw tobacco for production of manufactured tobacco, or an intermediary tobacco entity, except for sale by an entity which makes intra-Community supply or export of raw tobacco with that sale,
  - b) failure to keep records of raw tobacco or keeping those records in an unreliable manner,
  - c) failure to record the charge of the general guarantee with the amount of the tax liability which arose or can arise referred to in Article 65(7) or record that charge or release of the guarantee from that charge in an unreliable manner,
  - d) failure to meet the obligation to notify the competent director of customs office of changes in information included in the request for entry to the register,
  - e) conducting the activity involving raw tobacco at a place other than that specified in the decision on making the entry to the register;
- 2) the conditions the meeting of which is required for making the entry to the register of intermediary tobacco entities are violated, in particular when the excise guarantee submitted by the intermediary tobacco entity or the entity representing a foreign entrepreneur expired or does not provide any more for the cover, on time or at the amount due, of the tax liabilities which arose or may arise;
- 3) the entity representing the foreign entrepreneur is removed from the register referred to in Article 18.

2. The re-entry to the register of intermediary tobacco entities of an entity for which the decision referred to in paragraph (1) was issued is possible after 3 years of the service date of that decision.

**Article 20i. [Delegation of Legislative Powers – Templates of Requests, Documents Appended to Requests]**

The minister competent for public finance shall determine with a regulation the templates of the requests referred to in Article 20a(7)(1) and (2), and the list of documents to be appended thereto, taking into account the need for acquiring sufficient information on the entities, and in particular the information affecting the determination of the excise guarantee and the need for the proper operation of the intermediary tobacco entity.

## **Chapter 4**

### **Tax Return.**

#### **Excise Duty Payment Dates**

#### **Article 21 [Tax Return. Excise Duty Self-Calculation and Payment Dates]**

1. The taxpayer shall be obliged, without request of the tax authority:

- 1) to submit tax returns to the competent director of customs office according to the template specified,
- 2) to calculate and make a payment of excise duty to the bank account of the competent customs chamber

- for monthly settlement periods, to the 25<sup>th</sup> day of the month following the month in which the tax obligation arose, unless otherwise set out by special provisions.

2. Should the excise duty suspension arrangement be applied, the taxpayer shall be obliged, without request of the tax authority:

- 1) to submit tax returns to the competent director of customs office according to the template specified,
- 2) to calculate and make a payment of excise duty to the bank account of the competent customs chamber

- for monthly settlement periods, to the 25<sup>th</sup> day of the month following the month in which the excise duty suspension arrangement was completed resulting in the arising of the tax obligation.

3. The provisions of paragraphs (1) and (2) shall not apply:

- 1) to the extent that the taxpayer is obliged to submit a simplified tax return, calculate and pay excise duty as specified in Article 78(1)(3);
- 2) to the extent that the taxpayer is obliged to submit a tax return, calculate and pay excise duty on electricity as specified in Article 24(1);
- 3) to an entity conducting economic activity involving excise goods subject to zero excise rate or exempted from excise duty, except for partial exemptions or exemptions by means

of excise refund, or exemptions of losses of excise goods or of total destruction of excise goods referred to in Article 30(3);

4) to import of excise goods referred to in Article 27-29.

4. <sup>63</sup> (repealed).

5. The tax liability shall be assumed at the amount resulting from the tax return or from the simplified tax return, unless the tax authority or the fiscal inspection authority determines the obligation at a different amount.

6. <sup>64</sup> (repealed).

7. With prejudice to Article 23(4) and Article 27(2), the excise duty amount shall be reduced by the amount constituting the value of tax excise stamps properly affixed to excise goods or unit packets of excise goods, not earlier however than:

1) the day after the stamps are affixed to the given excise good or unit packet – in the case of marking excise goods with excise stamps in a tax warehouse within the territory of the country, with prejudice to sub-paragraph (4)(b);

2) after the tax obligation arises – in the case of:

- a) production of excise goods referred to in Article 47(1)(1), (2), (4) or (5),
- b) a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee,
- c) a taxpayer making intra-Community acquisition of excise goods with excise duty paid within the territory of a Member State for the purposes of economic activity,
- d) intra-Community acquisition of excise goods with excise duty paid, made through a tax representative referred to in Article 79(1),
- e) an entity performing activities referred to in Article 9b(1)(1) and (2);

3) the day after the entry of excise goods to a tax warehouse within the territory of the country – in the case of import or intra-Community acquisition of excise goods marked with excise stamps by a tax warehouse keeper within the territory of a third country or within the territory of a Member State;

4) the day after the tax obligation arises – in the case of:

- a) a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee,
- b) the owner of excise goods referred to in Article 13(3).

8. The amount of excise duty due on given excise goods produced in a tax warehouse or outside a tax warehouse pursuant to Article 47(1)(1) may be reduced by the excise duty paid on the components constituting excise goods consumed to produce the said goods.

9. In case of losses of excise goods not exceeding the level of acceptable losses referred to in Article 85(1)(1), (2)(1)(a) and in the provisions issued under Article 85(7), and also in case of total destruction of the excise goods referred to in Article 2(1)(20), except for the losses and total destruction referred to in Article 30(3), the taxpayer shall be obliged, without request of the tax authority, to submit a tax return, calculate and pay excise duty for a daily settlement

period, until the 25<sup>th</sup> day of the month following the month in which the loss or total destruction arose.

**Article 21a. [Tax Return. Coal Products Excise Duty Self-Calculation and Payment Dates]**

1. In the case of coal products the taxpayer shall be obliged, without request of the tax authority:

- 1) to submit tax returns to the competent director of customs office according to the template specified,
- 2) to calculate and make a payment of excise duty to the bank account of the competent customs chamber

- for monthly settlement periods, until the 25<sup>th</sup> day falling in the second month from the month in which the tax obligation arose, with prejudice to Article 78(1)(3).

2. The amount of excise duty due on coal products may be reduced by the excise duty paid on other coal products consumed to produce the said products.

3. The provision of paragraph (1) shall not apply to entities performing activities subject to taxation involving coal products exempt from excise duty.

**Article 22 [Excise Duty Prepayment]**

1. With prejudice to Article 47(1)(1)-(4) and (6), in the case of production of the excise goods referred to in Annex No. 2 hereto and excise goods other than those specified in Annex No. 2 hereto with excise duty rate other than zero rate outside a tax warehouse, the producer shall be obliged, without request of the tax authority:

- 1) to submit excise duty prepayment returns to the competent director of customs office according to the template specified,
- 2) to calculate and make a payment of the excise duty prepayment to the bank account of the competent customs chamber at the amount of excise duty which will be due on the excise goods produced in the given month

- for monthly settlement periods, until the last day of the month preceding the month in which the excise goods are to be produced.

2. The excise duty prepayment made shall be accounted towards the excise duty due on the settlement month referred to in paragraph (1).

3. The excise duty prepayment made shall be disclosed in the tax return referred to in Article 21(1)(1).



4. Should the excise duty prepayment be lower than the excise duty due for the settlement month to which it applies, interest shall be charged on that difference as on tax arrears, for the period from the last day of the month preceding the month in which the excise goods were produced to the day on which the excise duty due on those goods should be paid. The provisions on tax arrears shall apply accordingly.

5. Should the excise duty prepayment be higher than the excise duty due for the settlement month to which it applies, the excise duty prepayment excess disclosed in the tax return referred to in Article 21(1)(1) shall be set off with the excise duty prepayment for the next settlement periods, provided that the taxpayer has no tax arrears or current tax liabilities and the taxpayer does not submit a request to account the excess in full or in part towards the future tax liabilities.

### **Article 23 [Provisional Payment of Excise Duty for Daily Periods]**

1. Registered consignees, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee, tax warehouse keepers, and the taxpayers referred to in Article 13(3) shall be obliged, without request of the tax authority, to calculate and make a payment of excise duty provisionally for daily periods to the bank account of the competent customs chamber.

2. The provisional payments of excise duty for daily periods, hereinafter referred to as “daily payments”, shall be made no later than on the 25<sup>th</sup> day after the day on which the tax obligation arose, and in the case of a tax warehouse keeper – after the day on which the excise duty suspension arrangement is completed and the tax liability arises.

3. The daily payments made for the settlement month shall be disclosed in the tax returns referred to in Article 21(1)(1) or (2)(1).

4. The daily payments shall be reduced by:

1) the amount constituting the value of tax excise stamps properly affixed to excise goods or unit packets of excise goods, not earlier however than:

- a) the day after the stamps are affixed to the given excise good or unit packet – in the case of marking excise goods with excise stamps in a tax warehouse within the territory of the country, with prejudice to first indent of item (b),
- b) the day after the entry of excise goods to a tax warehouse within the territory of the country – in the case of import or intra-Community acquisition of excise goods marked with excise stamps by a tax warehouse keeper within the territory of a third country or within the territory of a Member State,
- c) the day after the tax obligation arises – in the case of:
  - a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee,
  - the owner of excise goods referred to in Article 13(3);

2) the amounts of exemptions and reductions of excise duty to which the taxpayer is entitled.

5. The daily payments excess disclosed in the tax return referred to in Article 21(1)(1) or (2)(1) shall be set off with the daily payments for the next settlement periods, provided that the taxpayer has no tax arrears or current tax liabilities and the taxpayer does not submit a request to account the excess in full or in part towards the future tax liabilities.

6. The daily payments shall constitute an advance payment towards excise duty.

#### **Article 24 [Tax Return. Electricity Excise Duty Self-Calculation and Payment Dates]**

1. In the case of electricity the taxpayer shall be obliged, without request of the tax authority, to submit tax returns to the competent director of customs office according to the template specified, and to calculate and make a payment of excise duty to the bank account of the competent customs chamber, until the 25<sup>th</sup> day of the month following the month in which:

1) the payment time limit demonstrated on the invoice expired, and if the time limit is not specified – following the month in which the invoice was issued – in the case of intra-Community acquisition of electricity by an end consumer;

2) <sup>65</sup> the payment time limit specified in the contract concerning the settlements due to electricity supplies expired, or if the time limit is not specified in the contract – the payment time limit expired resulting from the invoice or a different document issued by the taxpayer from which the payment of amounts due for the electricity sold by the taxpayer results, and if the payment time limit is specified neither in the contract nor in the invoice or that document, or if the amount due for the electricity sold in that period does not result from the invoice – after the month in which the invoice or that documents was issued – in the case of sale of electricity to an end consumer within the territory of the country;

3) the electricity was consumed – in the cases referred to in Article 9(1)(3), (4) and (6).

2. <sup>66</sup> The provision of paragraph (1)(3) shall not apply to entities holding a concession for electricity generation within the meaning of the provisions of the Act of 10<sup>th</sup> April 1997 – the Energy Law which consume the electricity for the purposes of the exemption referred to in Article 30(6), (7) or (7a) and are not taxpayers due to other activities referred to in Article 9(1).

#### **Article 24a. [Tax Return. Raw Tobacco Excise Duty Self-Calculation and Payment Dates]**

In the case of raw tobacco, the taxpayer shall be obliged, without request of the tax authority, to submit tax returns to the competent director of customs office according to the template specified, and to calculate and make a payment of excise duty to the bank account of the competent customs chamber for monthly settlement periods, until the 25<sup>th</sup> day of the month following the month in which the tax obligation arose, with prejudice to Article 78(1)(3).

#### **Article 24b. [Tax Return. Gas Products Excise Duty Self-Calculation and Payment Dates]**

1. In the case of gas products the taxpayer shall be obliged, without request of the tax authority, to submit tax returns to the competent director of customs office according to the template specified, and to calculate and make a payment of excise duty to the bank account of the competent customs chamber for monthly periods, until the 25<sup>th</sup> day of the month following the month in which:

1) the payment time limit demonstrated on the invoice expired, and if the time limit is not specified – following the month in which the invoice was issued – in the case of intra-Community acquisition;

2) <sup>67</sup> the payment time limit specified in the contract concerning the settlements due to gas products supplies expired, or if the time limit is not specified in the contract – the payment time limit expired resulting from the invoice or a different document issued by the taxpayer from which the payment of amounts due for the gas products sold by the taxpayer results, and if the payment time limit is specified neither in the contract nor in the invoice or that document, or if the amount due for the gas products sold in that period does not result from the invoice – after the month in which the invoice or that documents was issued – in the case of sale of gas products to a gas end consumer;

3) the gas products were consumed – in the cases referred to in Article 9c(1)(4) or (5).

2. The provisions of paragraph (1) shall not apply to entities performing activities subject to taxation involving gas products exempt from excise duty.

3. The amount of excise duty due on gas products may be reduced by the excise duty paid on other gas products consumed to produce the said products.

#### **Article 24c. [Customs Offices and Tax Offices Accepting Tax Returns]**

<sup>68</sup> The tax returns referred to in Article 21-22 and Article 24-24b may be submitted by the taxpayer to each customs office or tax office where a service centre is operated. The tax returns shall be immediately transferred to the competent director of customs office.

#### **Article 25**

(repealed).

#### **Article 26 [Delegation of Legislative Powers to Specify Return and Information Templates]**

1. <sup>69</sup> The minister competent for public finance shall determine with a regulation the templates of tax returns and returns concerning excise duty prepayments with information on the manner to properly submit those returns, information on time limits and place to submit them, and instruction to the taxpayer that tax returns constitute the basis to issue an

enforcement title, providing for the possibility to calculate properly the amount of excise duty.

2. The minister competent for public finance may determine with a regulation:

- 1) the detailed procedure or conditions to settle excise duty, in particular in case of reducing the excise duty amount by the amount of excise duty paid within the purchase price of excise goods consumed to produce other excise goods,
  - 2) the excise goods in the case of which the taxpayers may apply settlement time limits, time limits to submit returns or pay excise duty longer than those referred to in Article 21(1), (2) and (9), in Article 21a(1), in Article 23(2), in Article 24(1) and in Article 24b(1), or the conditions to be met by the entities applying those periods or time limits
- taking into account the principle of one-time taxation with excise duty, the frequency of arising of tax obligation in excise duty, and the need to provide for the proper performance of the tax obligation and excise duty payment.

## **Chapter 5**

### **Procedure for Import**

#### **Article 27 [Settlement of Tax for Import of Excise Goods/Excise Duty for Import]**

1. <sup>70</sup> In the case of import, the taxpayer shall be obliged, with prejudice to paragraphs (3) and (3a), to calculate and disclose the excise duty amount, taking into account binding excise rates:

- 1) in the customs declaration,
  - 2) where the simplified procedures referred to in Article 76(1) of the Council Regulation (EEC) No. 2913/92 of 12<sup>th</sup> October 1992 establishing the Community Customs Code apply, in:
    - a) the incomplete declaration, or
    - b) the simplified declaration, or
    - c) the entry to the records
- and in the supplementary declaration within the meaning of the provisions of the customs law.

2. The excise duty amount to be paid due to import of excise goods shall be reduced by the value of tax excise stamps properly affixed to excise goods or unit packets of excise goods covered with the customs declaration.

3. Should the imported excise goods be under the excise duty suspension arrangement or should the excise goods exempted from excise duty due to their intended use be imported, the taxpayer shall be obliged to include in the documents referred to in paragraph (1) the information on the excise duty amount which would be due if the excise goods were not under excise duty suspension arrangement or exempted from excise duty.

3a. <sup>71</sup> Should the energy products imported be moved with the use of a pipeline from the place of importation directly to a tax warehouse within the territory of the country, directly following the release for free circulation under simplified declaration within the meaning of the provisions of the customs law, under the excise duty suspension arrangement:

1) no information on the excise duty amount which would be due if the excise goods were not under the excise duty suspension arrangement shall be included in the simplified declaration;

2) the supplementary declaration containing information on the excise duty amount which would be due if the excise goods were not under the excise duty suspension arrangement shall be sent no later than upon the moment of sending the e-AD draft to the System.

4. Should the competent director of customs office find that the excise duty amount is disclosed incorrectly in the customs declaration, they shall issue a decision determining the excise duty at the due amount. The competent director of customs office may determine the excise duty amount in a decision concerning import duties.

5. Following the acceptance of the customs declaration, the taxpayer may apply to the competent director of customs office for the issue of a decision determining the due amount of excise duty.

6. In the cases other than referred to in paragraphs (1), (4) and (5), the competent director of customs office shall determine the excise duty amount due to import of excise goods with a decision.

7. <sup>72</sup> In case of determining the excise duty amount in the decision of the director of customs office, the taxpayer shall be obliged to pay the difference between the excise duty resulting from that decision and the excise duty collected by that authority within 10 days of the service date of that decision, with default interest on the uncollected excise duty amount charged from the day following the date in which the tax obligation arose to the date of notifying of the amount of tax due. To the principles of collection and amount of the interest the provisions of Article 65(6a) and (6b) of the Act of 19<sup>th</sup> March 2004 – the Customs Law shall apply accordingly.

8. In the case of applying the simplified procedure referred to in Article 76(1)(c) of the Council Regulation (EEC) No. 2913/92 of 12<sup>th</sup> October 1992 establishing the Community Customs Code, the registered consignor shall provide the competent director of customs office with a copy of the entry to or printout of the records of goods released for free circulation immediately following the transfer of the e-AD draft concerning the excise goods covered with the entry to the System, except for situations when following the transfer of the e-AD draft a supplementary notification within the meaning of the customs law provisions is sent immediately.

### **Article 28 [Dates, Manner of Payment, and Guarantee of Excise Duty due to Import]**

1. In the scope not regulated herein, with regard to time limits and manner of payment of excise duty due to import, the customs law provisions concerning time limits and manners to pay customs duties shall apply accordingly, except for the provisions concerning the prolongation of payment time limit, postponement of payment time limit, and other payment-related facilitations specified by those provisions.
2. The taxpayer shall be obliged to pay excise duty also when the excise goods are exempted from import duties or rates of duty are suspended or reduced to zero rate.
3. <sup>73</sup> The competent director of customs office shall secure the amount of excise duty and of petrol fee if they are not paid, in the cases and in the mode applied while securing customs duties under the customs law provisions, except for the cases when an excise good is under the excise duty suspension arrangement and excise guarantee is provided.

### **Article 29 [Specification of Items of Charge]**

If a debtor may not be notified of the amount of customs debt under the customs law provisions due to the statute of limitations, and there is a basis to calculate or verify tax due, the competent director of customs office may determine the items of charge according to the rules specified in the customs law provisions to properly determine the amount of excise duty due to import.

## **Chapter 6**

### **Exemptions**

### **Article 30 [Excise Exemptions]**

1. Electricity generated from renewable sources shall be exempted from excise duty based on a document confirming annulment of the certificate of origin of energy within the meaning of the provisions of the energy law.
2. The exemption referred to in paragraph (1) shall be applied no earlier than upon the receipt of the document confirming annulment of the certificate of origin of energy, by reducing excise duty due on electricity for the nearest settlement periods.
3. Losses of the excise goods or total destruction of the excise goods referred to in Article 2(1)(20) arisen due to unforeseeable circumstances or force majeure shall be exempted from excise duty, provided that the taxpayer proves that circumstances entitling to exemption occurred.
4. Losses of excise goods shall be exempted from excise duty up to the amount:

- 1) determined for a given entity by the competent director of customs office under Article 85(1)(1) or (2)(1)(a);
  - 2) specified in the provisions issued pursuant to Article 85(7).
5. The exemption referred to in paragraphs (3) and (4) shall not apply to losses or total destruction of excise goods arising out of committing an offence against property.
6. The consumption of electricity in the process of generation of electricity shall be exempted from excise duty, as well as the consumption of such electricity for the purposes of maintaining those generation processes.
7. The consumption of electricity in the process of combined electricity and heat generation shall be exempted from excise duty.
- 7a. <sup>74</sup> The electricity used for the following purposes shall be exempted from excise duty:
- 1) for the purposes of chemical reduction;
  - 2) in electrolytic processes;
  - 3) in metallurgical processes;
  - 4) in mineralogical processes.
- 7b. <sup>75</sup> The condition for the exemption referred to in paragraph (7a) shall be:
- 1) the use of electricity by an entity being a taxpayer of excise duty on that electricity;
  - 2) for the entity using the electricity to provide the competent director of customs office with a declaration on the volume of electricity used and the manner of its use, until the 15<sup>th</sup> day of the month falling after the month in which the entity used the electricity.
- 7c. <sup>76</sup> The declaration referred to in paragraph (7b)(2) should include:
- 1) the business name and the address of the seat of the entity using the electricity and the tax identification number (NIP) thereof;
  - 2) the volume of electricity used;
  - 3) the manner of using the electricity;
  - 4) the date and place of drafting the declaration and legible signature of the person submitting the declaration.
8. The use electricity generated on board a craft for the purpose of navigation, including fishing, shall be exempted from excise duty.
9. The following ethyl alcohol shall be exempted from excise duty:
- 1) completely denatured, imported, acquired within intra-Community acquisition or produced within the territory of the country, with denaturants specified by any European Union Member State under the Commission Regulation (EC) No. 3199/93 of 22<sup>nd</sup> November 1993 on the mutual recognition of procedures for the complete denaturing of alcohol for the purposes of excise exemption, including ethyl alcohol contained in goods not intended for human consumption;

- 2) contained in goods not intended for human consumption acquired within intra-Community acquisition, denatured with denaturants allowed by the Member State of origin of the good;
- 3) contained in imported goods not intended for human consumption, denatured with the denaturants referred to in Article 32(4)(2);
- 4) contained in medicinal products within the meaning of the provisions of the Act of 6<sup>th</sup> September 2001 – the Pharmaceutical Law (Journal of Laws of 2008 No. 45, item 271, as amended);
- 5) contained in essential oils or mixtures of fragrances for preparation of foodstuffs and non-alcoholic drinks with the actual alcoholic strength by volume not exceeding 1.2% vol.;
- 6) contained in the foodstuffs or the semi-finished products referred to in Article 32(4)(3)(d).

### **Article 31 [Exemption of Activities Involving Excise Goods from Excise Duty]**

1. Excise exemption shall apply to activities subject to taxation the object of which are excise goods that are intended to be used:

- 1) by the European Union institutions;
- 2) in the context of diplomatic or consular relations with regard to persons who are not Polish citizens and have no permanent place of residence within the territory of the country;
- 3) by international organisations recognised as such by the public authorities within the territory of the country and by members of such organisations, within the limits and under the conditions specified by international conventions establishing such organisations or by headquarters agreements;
- 4) by armed forces of a country being a party to the North Atlantic Treaty other than a European Union Member State within the territory of which the excise duty is chargeable, and by armed forces participating in the Partnership for Peace, the Headquarters of the Multinational Corps Northeast, and by the Alliance Commands, in particular by the Command of Joint Force Training Centre, for the use of those armed forces or for the civil staff accompanying them, or for supplying their messes rooms or canteens;
- 5) for consumption under an agreement concluded with third countries or international organisations, provided that those goods are exempt from tax on goods and services.

2. (repealed).

3. The exemptions referred to in paragraph (1)(4) shall not apply to the Armed Forces of the Republic of Poland.

4. <sup>77</sup> The exemptions referred to in paragraph (1) may be also by means of a refund of excise duty.



5. In the case of the excise by means of the refund of the excise duty, the designated director of customs office shall determine with a decision the amount of the excise duty refund.
6. The minister competent for public finance shall determine with a regulation:
- 1) the detailed scope, and conditions and procedure of application of the excise exemption referred to in paragraph (1),
  - 2) the directors of customs office competent for the refund of excise duty
    - taking into account the need of effective functioning of excise duty exemptions, the need to provide for proper control, and the need to provide for the flow of information on the goods exempted from excise duty.

**Article 31a. [Exemption of Activities Involving Coal Products from Excise Duty]**

1. Excise exemption shall apply to activities subject to taxation the object of which are coal products intended for heating purposes:

- 1) in the process of electricity generation;
- 2) in the process of production of energy products;
- 3) by a household, a public administration authority, a unit of the Armed Forces of the Republic of Poland, an entity of the education system referred to in Article 2 of the Act of 7<sup>th</sup> September 1991 on Education System (Journal of Laws of 2004 No. 256, item 2572, as amended), a pre-school and a children club referred to in the Act of 4<sup>th</sup> February 2011 on Care for Children Aged up to 3 (Journal of Laws of 2013, item 1457), a health care entity referred to in Article 4(1) of the Act of 15<sup>th</sup> April 2011 on Health Care Activity (Journal of Laws of 2013, item 217 and of 2014, item 24), an organisational unit of social care referred to in Article 6(5) of the Act of 12<sup>th</sup> March 2004 on Social Care (Journal of Laws of 2013, item 182, as amended), organisations referred to in Article 3(2) and (3) of the Act of 24<sup>th</sup> April 2003 on Public Benefit Activity and Volunteer Work (Journal of Laws of 2010 No. 234, item 1536, as amended);
- 4) for the carriage of goods and passengers by rail;
- 5) for the combined heat and electricity generation;
- 6) in agricultural, horticultural or piscicultural works, and in forestry;
- 7) in mineralogical, electrolytic and metallurgical processes, and for chemical reduction;
- 8) by an energy-intensive business using coal products;
- 9) by an economic entity where schemes are implemented as far as they lead to the achievement of environmental protection objectives or to improvements in energy efficiency.

2. The losses of coal products acquired under the exemption referred to in paragraph (1) arisen at a coal end consumer shall be exempted from excise duty, provided that during a tax

control, control proceedings, or tax proceedings the use of those products for purposes other than those specified in paragraph (1) was not found.

3. The condition for the exemption referred to in paragraph (1) shall be:

1) in the case of sale of coal products within the territory of the country to a coal end consumer – the issue by the entity selling the coal products of a document of supply or an invoice, if it specifies the CN code of the coal products, their quantity in kilograms, and their intended use entitling to the excise exemption, and confirmation with the signature of the acquisition of those products by the coal end consumer;

2) in the case of intra-Community acquisition of coal products by a coal end consumer – documenting the intra-Community acquisition with an invoice issued by the seller of the coal products or a document of supply confirming the acquisition and specifying the intended use of those products;

3) in the case of import of coal products by a coal end consumer – documenting the import with documents required by the provisions of the customs law.

4. The signature confirming the acquisition of coal products by a coal end consumer referred to in paragraph (3)(1) may be affixed to:

1) the document of supply or the invoice referred to in paragraph (3)(1), or

2) the contract entered into by the seller of the coal products and the coal end consumer.

5. In the case of a return of coal products acquired under the exemption referred to in paragraph (1) by the coal end consumer to the entity which sold those products thereto, the products shall be returned based on the document of supply or the corrective invoice.

6. (repealed).

7. The energy-intensive business using coal products shall be deemed to be an entity where the share of purchase of coal products in the production value is no less than 10% in the year preceding the year for which the share is determined. The energy-intensive business using coal products may not be smaller than an organised part of an enterprise understood as a set of tangible and intangible assets, including liabilities, organisationally and financially separated within an existing enterprise, intended for the execution of specific economic tasks, which at the same time could constitute an independent enterprise executing those tasks on its own.

8. <sup>78</sup> The energy-intensive business using coal products shall also be deemed to be an entity starting economic activity using coal products, or an entity conducting economic activity which launches a new installation using coal products, provided that a declaration on the planned achievement of the share referred to in paragraph (7) is submitted to the competent director of customs office.

9. <sup>79</sup> Should the share referred to in paragraph (7) not be achieved at the end of the first year of the economic activity, the entity referred to in paragraph (8) shall be obliged to pay in the first quarter of the next year excise duty on the coal products used on which excise duty was not paid, including interest.

### **Article 31b. [Exemption of Activities Involving Gas Products from Excise Duty]**

1. Excise exemption shall apply to activities subject to taxation the object of which are gas products intended for heating purposes:

- 1) for the carriage of goods and passengers by rail;
- 2) for the combined heat and electricity generation;
- 3) in agricultural, horticultural or piscicultural works, and in forestry;
- 4) in mineralogical, electrolytic and metallurgical processes, and for chemical reduction;
- 5) by an energy-intensive business using gas products where schemes are implemented as far as they lead to the achievement of environmental protection objectives or to improvements in energy efficiency.

2. Excise exemption shall apply to activities the object of which are gas products with the following CN codes: 2705 00 00, 2711 11 00, 2711 21 00 and 2711 29 00 intended for heating purposes by:

- 1) households;
- 2) public administration authorities;
- 3) units of the Armed Forces of the Republic of Poland;
- 4) entities of the education system referred to in Article 2 of the Act of 7<sup>th</sup> September 1991 on Education System;
- 5) pre-schools and a children clubs referred to in the Act of 4<sup>th</sup> February 2011 on Care for Children Aged up to 3;
- 6) health care entities referred to in Article 4(1) of the Act of 15<sup>th</sup> April 2011 on Health Care Activity;
- 7) organisational units of social care referred to in Article 6(5) of the Act of 12<sup>th</sup> March 2004 on Social Care;
- 8) organisations referred to in Article 3(2) and (3) of the Act of 24<sup>th</sup> April 2003 on Public Benefit Activity and Volunteer Work.

3. Excise exemption shall apply to activities the object of which are gas products intended for use:

- 1) as propellant for the:
  - a) aircraft,
  - b) in navigation, including fishing
  - except for the private pleasure craft and private pleasure-flying referred to in Article 32(2).
- 2) in the process of electricity generation;

- 3) in the process of production of energy products.
4. Excise exemption shall apply to activities the object of which are gas products intended to stationary motors or for heating purposes related to stationary motors used:
- 1) in the cases referred to in paragraphs (1)(1)-(5), or
  - 2) for the needs of transmission, distribution, or storage of those products.
5. In the case of sale of gas products under the exemptions referred to in paragraphs (1), (2)(2)-(8), and (3)(2) and (3), and paragraph (4) to entities using those products for the purposes specified in those provisions, the condition for the exemption shall be for the contract entered into by the seller and the purchaser to specify that those products will be used for those purposes.
- 5a. <sup>80</sup> Should the contract referred to in paragraph (5) concern gas products exempted from excise duty and gas products not subject to exemption the sale of which is settled on periodical basis, the contract shall specify provisionally the quantity of products subject to exemption. The quantity of products subject to exemption specified provisionally in the contract may be adjusted with a written declaration of the purchaser constituting an annex to the contract, no later than until the date of issue of the invoice for the settlement period by the seller, if the actual quantity of gas products subject to exemption used in that period is different from the quantity specified provisionally in the contract.
6. The condition for the exemption referred to in paragraph (2)(1) shall be:
- 1) in the case of gas products falling within CN code 2711 21 00 – sale of those products at quantities not exceeding:
    - a) 10 m<sup>3</sup>/h – of methane-rich gas of the E group, no more than 8000 cubic meters annually, or
    - b) 25 m<sup>3</sup>/h – of nitrogen-rich gas of the Lw, Ls, Ln, or Lm group, no more than 10650 cubic meters annually;
  - 2) in the case of gas products with the ex CN code 2711 29 00 – sale of those products at quantities not exceeding:
    - a) 10 m<sup>3</sup>/h – of propane-butane-air gas product, no more than 5000 cubic meters annually, or
    - b) 10 m<sup>3</sup>/h – of decompressed propane-butane gas product, no more than 1000 cubic meters annually;
  - 3) in the case of sale of gas products:
    - a) falling within CN codes 2705 00 00 and 2711 11 00,
    - b) falling within CN code 2711 21 00 at quantities larger than those specified in sub-section (1),
    - c) falling within CN code 2711 29 00 at quantities larger than those specified in sub-section (2)
    - the receiving of a declaration from the purchaser of those products that they do not use those products for the purposes other than maintaining a household, including for the needs of economic activity, or of a declaration on the quantity of

those products used for the needs other than maintaining a household, including for the needs of economic activity, specified by the purchaser proportionately to the surface area of the premises used for those needs, including the capacity of heating appliances.

7. In the case of sale of propane-butane gas products with the ex CN code 2711 29 00, the condition for the exemption referred to in paragraph (2)(1) shall also be the entry of those products to the distribution network within the meaning of the Act of 10<sup>th</sup> April 1997 – the Energy Law.

8. For the purposes of application of the exemption referred to in paragraph (2)(1), the household shall not be deemed to be a real property used entirely for the purposes of economic activity in which the consumption of the products referred to in paragraph (6)(1) or (2) does not exceed the quantities specified therein.

9. In the case of sale of products referred to in paragraph (3)(1) to entities using those products for the purposes specified in that provision, the condition for the exemption shall be an invoice issued by the seller and the declaration of the purchaser on the use of the gas products for those purposes.

10. The energy-intensive business using gas products shall be deemed to be an entity where the share of purchase of gas products in the production value is no less than 5% in the year preceding the year for which the share is determined. The energy-intensive business using gas products may not be smaller than an organised part of an enterprise understood as a set of tangible and intangible assets, including liabilities, organisationally and financially separated within an existing enterprise, intended for the execution of specific economic tasks, which at the same time could constitute an independent enterprise executing those tasks on its own.

10a. <sup>81</sup> The energy-intensive business using gas products shall also be deemed to be an entity starting economic activity using gas products, or an entity conducting economic activity which launches a new installation using gas products, provided that a declaration on the planned achievement of the share referred to in paragraph (10) is submitted to the competent director of customs office.

10b. <sup>82</sup> Should the share referred to in paragraph (10) not be achieved at the end of the first year of the economic activity, the entity referred to in paragraph (10a) shall be obliged to pay in the first quarter of the next year excise duty on the gas products used on which excise duty was not paid, including interest.

11. The losses of gas products acquired under the exemption referred to in paragraphs (1)-(4) arisen at a gas end consumer shall be exempted from excise duty, provided that during a tax control, control proceedings, or tax proceedings the use of those products for purposes other than those specified in those provisions was not found.

**Article 31c. [Schemes which Lead to Achievement of Environmental Protection Objectives or to Improvements in Energy Efficiency]**

<sup>83</sup> The schemes which lead to the achievement of environmental protection objectives or to improvements in energy efficiency referred to in Article 31a(1)(9) and Article 31b(1)(5) shall be deemed to be:

- 1) the European Emission Trading System pursuant to the Act of 12<sup>th</sup> June 2015 on Greenhouse Gas Emission Trading System (Journal of Laws item 1223) and the provisions issued under Article 25(4) and Article 29(1) thereof;
- 2) the EMAS referred to in the Act of 15<sup>th</sup> July 2011 on National System of Eco-Management and Audit (EMAS) (Journal of laws No. 178, item 1060);
- 3) acquisition and annulment of the energy efficiency certificates referred to in the Act of 15<sup>th</sup> April 2011 on Energy Efficiency (Journal of Laws No. 94, item 551, as amended) by entities obliged thereunder to acquire and submit for annulment energy efficiency certificates or to make a compensatory payment instead;
- 4) the environmental management system approved by an independent accreditation entity authorised thereto with the ISO 14001:2004 certificate;
- 5) the energy management system approved by an independent accreditation entity authorised thereto with the ISO 50001:2011 certificate.

#### **Article 31d. [Exemption from Excise Duty for Energy-Intensive Businesses]**

1. An energy-intensive business using electricity which meets the following conditions jointly:

- 1) the entity conducts economic activity with the following codes of the Polish Classification of Activities (PKD): 0510, 0729, 0811, 0891, 0893, 0899, 1032, 1039, 1041, 1062, 1104, 1106, 1310, 1320, 1394, 1395, 1411, 1610, 1621, 1711, 1712, 1722, 1920, 2012, 2013, 2014, 2015, 2016, 2017, 2060, 2110, 2221, 2222, 2311, 2312, 2313, 2314, 2319, 2320, 2331, 2342, 2343, 2349, 2399, 2410, 2420, 2431, 2432, 2434, 2441, 2442, 2443, 2444, 2445, 2446, 2720, 3299, 2011, 2332, 2351, 2352, 2451, 2452, 2453, 2454, 2611, 2680, or 3832,
- 2) the entity keeps accounting books within the meaning of the provisions on accounting,
- 3) the entity does not apply the excise exemption referred to in Article 30(7a) to that electricity
  - shall be entitled to excise exemption by means of a refund of excise duty paid on the electricity used by that entity.

2. The energy-intensive business using electricity shall be deemed to be an entity in which the share of costs of the electricity used in the production value in the tax year for which the request referred to in paragraph (5) is submitted amounts to more than 3%. The energy-intensive business using electricity may not be smaller than an organised part of an enterprise understood as a set of tangible and intangible assets, including liabilities, organisationally and

financially separated within an existing enterprise, intended for the execution of specific economic tasks, which at the same time could constitute an independent enterprise executing those tasks on its own.

3. The amount of refund of a part of the excise duty paid referred to in paragraph (1), hereinafter referred to as the “amount of a refund of part of the excise duty” shall be calculated as follows:

$$Z = \frac{K\% - 3\%}{K\%} \times (20 - 0,5 \times W) \times E \times 0,85$$

where:

Z – the amount of a refund of part of the excise duty (in PLN),

K – the share of the costs of the electricity used in the production value, expressed as a percentage (%), in the tax year for which the request referred to in paragraph (5) is submitted,

W – the exchange rate in the euro to the zloty, fixed as of the first working day of October of the year preceding the year in which the tax year for which the request referred to in paragraph (5) is submitted begun, published in the Official Journal of the European Union,

E – the total consumption of electricity expressed in megawatt hours (MWh) in the tax year for which the request referred to in paragraph (5) is submitted.

4. In the case of entities whose tax year is other than the calendar year, while calculating the amount of a refund of part of the excise duty for the tax year, the following shall be taken into account separately for each calendar year:

1) the exchange rate in the euro to the zloty published in the Official Journal of the European Union fixed as of the first working day of October of the year preceding the given calendar year;

2) the total consumption of electricity expressed in megawatt hours (MWh) in the proper part of the tax year falling in the given calendar year.

5. The amount of a refund of part of the excise duty shall be made upon request of the entity referred to in paragraph (1) for the period of the tax year. The designated director of customs office shall decide on the refund in a decision.

6. The director of the competent customs chamber shall disburse the amount of a refund of part of the excise duty upon request of the designated director of customs office.

7. The request referred to in paragraph (5) should include:

1) the given name and name or business name of the entity submitting request, and the place of residence or the address of the seat;

- 2) the tax identification number (NIP) of the entity submitting request;
  - 3) the number of the entity submitting request in the register of entrepreneurs in the National Court Register or the information on the entry in the Central Registration and Information on Business;
  - 4) the statistical identification number (REGON) of the entity submitting request;
  - 5) the amount of a refund of part of the excise duty which the entity requests;
  - 6) the bank account number to which the amount of a refund of part of the excise duty is to be made;
  - 7) the tax year for which the request is submitted;
  - 8) the declaration of the entity submitting request on:
    - a) the conducting of the economic activity referred to in paragraph (1)(1) with the code of the Polish Classification of Activities (PKD),
    - b) the keeping of the accounting books referred to in paragraph (1)(2).
8. The request referred to in paragraph (5) shall be appended with documents based on which the costs of the electricity used were determined while calculating the amount of a refund of part of the excise duty, and the opinion of a chartered accountant confirming the correct calculation of the share of the costs of the electricity used in the production value in the tax year for which the request is submitted.
9. The request referred to in paragraph (5) shall be submitted for the period of the tax year, until 31<sup>st</sup> December of the year following the year in which the tax year ended.
10. The payment of the amount of a refund of part of the excise duty shall be made to the bank account referred to in paragraph (7)(6) within 30 days of the receipt date of the request referred to in paragraph (5) with the documents referred to in paragraph (8).
11. The amount of a refund of part of the excise duty may not be higher than the amount of excise duty on electricity used by the energy-intensive business during the tax year for which the request referred to in paragraph (5) is submitted.
12. The minister competent for public finance shall designate with a regulation the director(s) of customs offices competent for deciding on the amount of a refund of part of the excise duty, taking into account the need for efficient functioning of the excise exemption referred to in paragraph (1), and provision for the proper control and flow of information on the exemption.

### **Article 32 [Single System of Exemption from Excise Duty]**

1. The following excise goods shall be exempted from excise duty due to their intended use:
  - 1) used for aircraft: jet gasolines falling within CN code 2710 11 31, gasoline type jet fuel falling within CN code 2710 11 70, and jet fuel falling within CN code 2710 19 21, or lubricating oil for aero-engines – in the cases referred to in paragraph (3), if the conditions referred to in paragraphs (5)-(13) are met;



- 2) used for the purposes of navigation, including fishing: energy products – in the cases referred to in paragraph (3), if the conditions referred to in paragraphs (5)-(13) are met;
- 3) used for heating purposes: other gas hydrocarbons falling within CN codes from 2711 12 11 to 2711 19 00 – in the cases referred to in paragraph (3), if the conditions referred to in paragraphs (5)-(13) are met;
- 4) used for the purposes referred to in Article 31b(1): energy products falling within CN code 2901 10 00 – in the cases referred to in paragraph (3), if the conditions referred to in paragraphs (5)-(13) are met;
- 5) used to stationary motors in the process of combined heat and electricity generation: other gas hydrocarbons falling within CN codes from 2711 12 11 to 2711 19 00 – in the cases referred to in paragraph (3), if the conditions referred to in paragraphs (5)-(13) are met.

1a. Heating oil other than as specified in Article 90(1)(1) used for the purpose of conducting delivery tests at producers of engines for the sea craft referred to in paragraphs (3)(1), (3), (4) or (7) shall be exempted from excise duty, if the conditions specified in paragraphs (5)-(13) are met.

2. The exemption referred to in paragraphs (1)(1) and (2) shall not apply in the case of private pleasure craft and private pleasure-flying which are deemed to be the use of a craft or aircraft by their owner or another natural person, legal person, or organisational unit without legal personality who use them under a contract of lease or of similar nature, for purposes other than economic ones, in particular other than for carriage of passengers or goods, or for the supply of services for consideration or for the purposes of public authorities.

3. The excise exemption of the goods referred to in paragraph (1) shall be applied exclusively, if:

- 1) they are supplied from a tax warehouse within the territory of the country to a consuming entity, or
- 2) they are supplied from a tax warehouse within the territory of the country to an intermediary entity, or
- 3) they are supplied from an intermediary entity to a consuming entity, or
- 4) they are acquired within intra-Community acquisition by a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee, to be consumed thereby as a consuming entity, or
- 5) they are acquired within intra-Community acquisition by a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee, to be supplied to a consuming entity, or
- 6) they are imported by an intermediary entity, or

- 7) they are imported by a consuming entity, or
- 8) they are consumed by a tax warehouse keeper acting as a consuming entity, or
- 9) they are consumed by an intermediary entity acting as a consuming entity.

4. The following shall be also exempted from excise duty due to the intended use:

1) energy products consumed in the process of electricity generation – exclusively in the cases referred to in paragraphs (3)(1)-(5), if the conditions referred to in paragraphs (5)-(13) are met;

2) <sup>85</sup> ethyl alcohol denatured with denaturants specified by the minister competent for public finance among the denaturants allowed under the provisions issued pursuant to the Act of 2<sup>nd</sup> March 2001 on Production of Ethyl Alcohol and Manufactured Tobacco (Journal of Laws of 2015, item 103) and used for the production of products not intended for human consumption – exclusively in the cases referred to in paragraphs (3)(1) or (8), if the conditions referred to in paragraphs (5)-(13) are met; in the case of a consuming entity, the excise exemption shall concern quantities not exceeding the acceptable consumption levels referred to in Article 85(1)(2)(b) and Article 85(2)(3);

3) alcoholic beverages used:

- a) for production of vinegar under the CN code 2209 00,
- b) for production of the medicinal products referred to in Article 30(9)(4),
- c) for production of the essential oils, mixtures of fragrances referred to in Article 30(9)(5),
- d) directly for preparation of foodstuffs – bottled ones or others, or as a component for semi-finished products intended for preparation of foodstuffs – bottled ones or others, provided that in each case the content of ethyl alcohol in those foodstuffs does not exceed 8.5 litre of 100% vol. ethyl alcohol per 100 kg of the product for chocolate products, and 5 litres of 100% vol. ethyl alcohol per 100 kg of the product for all other products

- exclusively in the cases referred to in paragraph (3)(1), (4) or (8), if the conditions referred to in paragraphs (5)-(13) are met; in the case of a consuming entity, the excise exemption shall concern quantities not exceeding the acceptable consumption levels referred to in Article 85(1)(2)(b) and Article 85(2)(3); <sup>86</sup>

4) <sup>87</sup> ethyl alcohol for which the consuming entity proves consumption according to the intended use – in case of exceeding the ethyl alcohol consumption levels referred to in Article 85(1)(2)(b) and Article 85(2)(3).

5. The condition for exemption of excise goods from excise duty due to the intended use shall also be:

1) for the excise goods subject to exemption to be covered with an excise guarantee, or in the case of import with a guarantee provided in the mode applied by securing customs duties under the provisions of the customs law provided by a tax warehouse keeper, an intermediary entity, or a registered consignee, except for a registered consignee that has

been granted an authorisation for a single acquisition of excise goods as registered consignee, at the amount of the tax liability which may arise in the case of using those goods not in conformity with their intended use entitling to excise exemption or of violation of the conditions of the exemption – until the moment of confirmation of receipt of the excise goods by the consuming entity or intermediary entity respectively; this condition shall not apply to the situation referred to in paragraph 3(4) or (8);

2) <sup>88</sup> for the moved excise goods to be appended with a document of supply;

3) <sup>89</sup> (repealed).

6. The condition for exemption of excise goods from excise duty due to their intended use in the cases referred to in paragraphs 3(1), (3) and (5) shall be furthermore for the consuming entity conducting economic activity with the use of the excise goods exempted from excise duty due to their intended use, having their place of residence, seat or the place of establishment within the territory of the country, to provide the entity supplying those excise goods with a written confirmation of acceptance of the registration application referred to in Article 16(3).

7. <sup>90</sup> (repealed).

8. <sup>91</sup> (repealed).

9. <sup>92</sup> (repealed).

10. <sup>93</sup> The document of supply based on which the excise goods subject to excise exemption due to their intended use are moved, may be replaced with another document, when that document contains the same data as required for the document of supply and its application is substantiated in international agreements or the provisions of the European Union law. To the document replacing the documents of supply the provisions on the document of supply shall apply accordingly.

11. The recipient of the excise goods exempted from excise duty due to their intended use shall be obliged to confirm the receipt thereof on the document of supply.

12. A consuming entity being a natural person not conducting economic activity who acquires excise goods exempted from excise duty due to their intended use shall be obliged to provide the supplier the ID or another document stating their identity, in order to confirm their identity.

13. An entity supplying excise goods exempted from excise duty due to their intended use to the consuming entity referred to in paragraph (12) shall be obliged to refuse to supply the goods, if the consuming entity refuses to provide the ID or another document stating their identity, or when the data provided by the consuming entity for the document of supply do not comply with the data in their ID card or another document stating their identity.

14. In the case of a return of excise goods exempted from excise duty due to their intended use by:

1) a consuming entity to an intermediary entity,

2) an intermediary entity or a consuming entity to a tax warehouse

- those goods shall be moved based on the document of supply.

### **Article 33 [Exemption of Motor Fuels from Excise Duty]**

1. Excise exemption shall apply to intra-Community acquisition of motor fuels intended for use during transport and carried in standard tanks:

- 1) of commercial motor vehicles;
- 2) fixed in special containers;
- 3) of aircraft or craft.

2. A commercial motor vehicle shall be deemed to be a motorised road vehicle, including tractors with or without trailers, which due to its construction or equipment is intended and fit for transport, whether for payment or not, of goods or more than nine people including the driver, and each road vehicle of special purpose other than transport.

3. A standard tank shall be deemed to be:

- 1) a fuel tank fixed permanently by the manufacturer in all means of transport of the same type and whose permanent fitting allows direct use of the fuel, both for propulsion and, where appropriate, for the operation of refrigeration and other systems during transport;
- 2) a tank fixed permanently by the manufacturer in all containers of the same type and whose permanent fitting allows for direct use of the fuel for the operation of refrigeration and other systems during transport with which a special container may be equipped.

4. A special container shall be deemed to be a container equipped with refrigeration, oxygenation systems, thermal insulation systems, and other systems.

5. The exemption referred to in paragraph (1) shall apply, provided that the motor fuels:

- 1) are used exclusively by the means of transport in which they have been carried;
- 2) are not removed from that means of transport or stored, unless necessary in case of repair of the means of transport;
- 3) are not transferred, whether for payment or not, by the person benefiting from the exemption.

6. Should the conditions referred to in paragraph (5) be violated, the amount of excise duty shall be determined based on the status from the day of violating those conditions, and if that day may not be determined – from the day when the violation was detected.

### **Article 34 [Exemption of Goods Acquired by Natural Persons from Excise Duty]**

1. Intra-Community acquisition of excise goods with excise duty paid made by a natural person within the territory of a Member State shall be exempted from excise duty, if those goods are moved by that person personally, for that person's own use, and if those goods are not intended for commercial purposes.

2. In order to determine the commercial purpose of the excise goods acquired within the intra-Community acquisition referred to in paragraph (1), tax authorities shall take into account:

- 1) the quantity of excise goods;
- 2) the commercial status of the natural person acquiring the excise goods within intra-Community acquisition;
- 3) the place where the excise goods are located, or, in case of doubts, the manner of transport used;
- 4) any document relating to the excise goods;
- 5) the nature of the excise goods.

3. A commercial purpose may be suggested in particular by intra-Community acquisition of excise goods at quantities exceeding:

- 1) manufactured tobacco:
  - a) cigarettes – 800 items,
  - b) cigarillos (cigars with mass not exceeding 3 grams/item) – 400 items,
  - c) cigars – 200 items,
  - d) smoking tobacco – 1 kilogram;
- 2) alcoholic beverages:
  - a) ethyl alcohol – 10 litres;
  - b) wine and fermented beverages – 90 litres, including sparkling wine – 60 litres,
  - c) beer – 110 litres,
  - d) intermediate products – 20 litres.

4. Intra-Community acquisition of energy products, at any quantity, with excise duty paid made by a natural person within the territory of a Member State shall suggest a commercial use of those products, if they are transported with atypical modes of transport.

5. An atypical mode of transport shall be deemed to be:

- 1) transport of motor fuels otherwise than in fuel tanks of motor vehicles fixed permanently by the manufacturer in all motor vehicles which allow for direct use of the fuel as motor fuel for the vehicle, or adjusted to motor vehicles which allow for direct use of gas as fuel, or in appropriate reserve fuel canisters containing motor fuels intended to be used in those vehicles, at a quantity not exceeding 10 litres;
- 2) transport of heating fuels otherwise than with the use of tankers used by entities within economic activity.

## **Article 35 [Exemption of Import of Fuels and Lubricants from Excise Duty]**

1. Excise exemption shall apply to import of:

- 1) motor fuels carried in standard tanks:
  - a) of motor vehicles, at a quantity not exceeding 600 litres per vehicle,

- b) of special containers, at a quantity not exceeding 200 litres per vehicle,
  - c) of aircraft or craft;
- 2) motor fuels contained in canisters transported by motor vehicles and at a quantity not exceeding 10 litres per vehicle, in conformity with the conditions set out in the provisions on storage and transport of fuels;
- 3) lubricants inside the means of transport referred to in sub-section (1) necessary for the operation thereof.

2. The provisions of Article 33(3)-(6) shall apply accordingly.

### **Article 36 [Exemption of Goods Imported in Personal Luggage of Traveller from Excise Duty]**

1. Excise exemption shall apply to import of manufactured tobacco or alcoholic beverages imported in the personal luggage of a traveller who is over 17, within the following limits:

- 1) manufactured tobacco – in the case of travellers in air or sea transport:
  - a) cigarettes – 200 items, or
  - b) cigarillos (cigars with mass not exceeding 3 grams/item) – 100 items, or
  - c) cigars – 50 items, or
  - d) smoking tobacco – 250 grams, or
  - e) a set of the products referred to in item (a)-(d), provided that the sum of percentage shares of the utilization of the limits specified for the particular products does not exceed 100%;
- 2) manufactured tobacco – in the case of travellers in transport other than air or sea transport:
  - a) cigarettes – 40 items, or
  - b) cigarillos (cigars with mass not exceeding 3 grams/item) – 20 items, or
  - c) cigars – 10 items, or
  - d) smoking tobacco – 50 grams, or
  - e) a set of the products referred to in item (a)-(d), provided that the sum of percentage shares of the utilization of the limits specified for the particular products does not exceed 100%;
- 3) the following alcoholic beverages:
  - a) undenatured ethyl alcohol with actual alcoholic strength by volume not exceeding 22% vol. – 1 litre, or
  - b) ethyl alcohol, fermented beverages, sparkling wines, and intermediate products with actual alcoholic strength by volume not exceeding 22% vol. – 2 litres, or
  - c) a set of the excise goods referred to in item (a) and (b), provided that the sum of percentage shares of the utilization of the limits specified for the particular products does not exceed 100%;
- 4) the following alcoholic beverages:

- a) still wines – 4 litres in total,
- b) beer – 16 litres.

2. A personal luggage shall be deemed to be the entire luggage the traveller is able to present to customs authorities while being within the territory of the country, as well as the luggage which will be presented to customs authorities at a later point of time, provided that those authorities are presented with evidence that the luggage has been registered as accompanying luggage by the entity responsible for the transport thereof at the time of departure.
3. Travellers in air transport shall be deemed to be all passengers travelling by air, except for private pleasure-flying.
4. Travellers in sea transport shall be deemed to be all passengers travelling by sea, except for private pleasure craft.
5. The exemptions referred to in paragraph (1) shall apply, provided that:
  - 1) the nature or quantity of the excise goods imported does not suggest import for commercial purposes;
  - 2) the import of those goods is occasional;
  - 3) those goods are intended exclusively for personal use of the traveller or their family, or for gifts.
6. The provisions of paragraphs (1)-(5) shall also apply, if the journey includes transit through the territory of a third country, and the traveller is not able to prove that the goods transported in their personal luggage were acquired under general rules of taxation within the territory of the European Union, and excise duty refund does not apply thereto. A through-flight without landing shall not be deemed to be transit.

### **Article 37 [Exemption of Import of Goods in Consignment from Excise Duty]**

1. Excise exemption shall apply to import of manufactured tobacco or alcoholic beverages contained in a consignment dispatched from the territory of a third country by a natural person and intended for a natural person staying within the territory of the country, if the following conditions jointly are met:

- 1) the consignment is of occasional nature;
- 2) the consignment contains excise goods intended exclusively for personal use of the recipient or their family;
- 3) the total value of the excise goods contained in the consignment does not exceed the equivalent of EUR 45;
- 4) the quantity and nature of the excise goods do not suggest a commercial use of those goods;
- 5) the recipient is not obliged to pay any fees for the sender due to the receipt of the consignment.

2. The excise goods referred to in paragraph (1) shall be exempted from excise duty, within the following limits:

1) manufactured tobacco:

- a) cigarettes – 50 items, or
- b) cigarillos (cigars with mass not exceeding 3 grams/item) – 25 items, or
- c) cigars – 10 items, or
- d) smoking tobacco – 50 grams;

2) alcoholic beverages:

- a) undenatured ethyl alcohol with actual alcoholic strength by volume not exceeding 22% vol. – 1 litre, or
- b) ethyl alcohol, fermented beverages and intermediate products with actual alcoholic strength by volume not exceeding 22% vol., sparkling wines – 1 litre, or
- c) still wines – 2 litres.

3. Should the quantity of the excise goods referred to in paragraph (1) exceed the limits referred to in paragraph (2), all manufactured tobacco and alcoholic beverages imported in the consignment referred to in paragraph (1) shall be subject to taxation.

4. The equivalent of the amount referred to in paragraph (1)(3) expressed in the euro shall be determined in the zloty per each calendar year in accordance with the exchange rate fixed as of the first working day of October of the previous year, announced in the Official Journal of the European Union, whereby the amount of the conversion shall be rounded to full zlotys in such a way so amounts that are less than PLN 0.50 shall be left out, and those of PLN 0.50 or more shall be rounded up to full zlotys.

### **Article 38 [Delegation of Legislative Powers]**

1. The minister competent for public finance shall determine with a regulation:

1) <sup>94</sup> the standard form and manner of use of the document of supply, including in the cases referred to in Article 31a(5), Article 42(1a) and (1b), and Article 89(2)(2) and (3), and the entities which issue the document of supply,

2) <sup>95</sup> (repealed),

3) the denaturants referred to in Article 32(4)(2), their quantity, and the conditions of use,

4) the conditions and manner of a refund of excise goods exempt from excise duty due to their intended use

- taking into account the need to provide for efficient functioning of exemptions from excise duty, proper control, and the flow of information on goods exempt from excise duty and excise goods with zero excise rate due to their intended use. <sup>96</sup>

2. The minister competent for public finance may determine with a regulation:



- 1) additional conditions and procedure of application of the exemptions referred to in Article 30, Article 31a, and Article 32, in particular as regards the record-keeping and documentation of entitlements to apply exemptions,
- 2) situations in which some or all conditions referred to in Article 31a(3), and Article 32(3) or (5)-(13) do not have to be met for the excise exemption to apply,
- 3) the cases referred to in Article 31a(3), and Article 32(3)(1)-(3) and (5)-(7), where the document of supply is not used,
- 4) the manner to use documents other than the document of supply referred to in Article 31a(3) for the purposes of exemption of coal products from excise duty due to their intended use

- taking into account the nature of turnover of excise goods subject to exemption and the need to provide for proper control of application of exemptions from excise duty.

#### **Article 39 [Delegation of Legislative Powers to Determine Exemptions from Excise Duty]**

1. The minister competent for public finance may introduce exemptions from excise duty with a regulation, if:

- 1) it is substantiated by significant interest connected with the public safety, the State defence, the State fuel security, or the environmental protection,
  - 2) it results from the provisions of the European Union law,
  - 3) it results from international agreements,
  - 4) it results from the need to avoid multiple taxation of excise goods,
  - 5) under the provisions of the customs law, excise goods are exempted from import duties
- by specifying the detailed scope, and the conditions and procedure of their application, taking into account the nature of turnover of excise goods and the need to provide for proper control.

2. Exemptions from excise duty may be:

- 1) full or partial;
- 2) by refund of excise duty;
- 3) introduced depending on the intended use, quantity, or production manner.

3. In the case of the excise exemption by means of refund of excise duty, the competent director of customs office shall determine with a decision the amount of the excise duty refund.

**SECTION III**  
**Organisation of Turnover of Excise Goods**

**Chapter 1**  
**Excise Duty Suspension Arrangement**

**Article 40 [Application of Excise Duty Suspension Arrangement]**

1. The excise duty suspension arrangement shall apply, if:

1) excise goods are:

- a) in a tax warehouse, including as a result of return by an intermediary entity or a consuming entity,
- b) moved between tax warehouses within the territory of the country,
- c) moved, for the purposes of export, from a tax warehouse within the territory of the country to a customs office within the territory of the country which supervises the actual exit of those goods outside the territory of the European Union;

1a) <sup>97</sup> the excise goods specified in Annex No. 2 hereto taxed with zero excise rate due to their intended use are in a tax warehouse, including as a result of return or supply by an entity which held those goods for consumption within the economic activity for the purposes entitling to apply zero excise rate, and which did not consume them for the purposes entitling to apply zero excise rate;

2) excise goods imported and released for free circulation are moved by a registered consignor from the place of importation within the territory of the country to:

- a) a tax warehouse within the territory of the country,
- b) a customs office within the territory of the country which supervises the actual exit of those goods outside the territory of the European Union,
- c) entities exempt from excise duty under Article 31(1);

3) (repealed).

2. The excise duty suspension arrangement shall also apply, if excise goods are moved:

- 1) from a tax warehouse within the territory of the country to a tax warehouse within the territory of a Member State;
- 2) from a tax warehouse within the territory of a Member State to a tax warehouse within the territory of the country;
- 3) for the purposes of export, from a tax warehouse within the territory of the country through the territories of Member States to a customs office which supervises the actual exit of those goods outside the territory of the European Union;

- 4) from a tax warehouse within the territory of a Member State to a customs office within the territory of the country which supervises the actual exit of those goods outside the territory of the European Union;
- 5) from a tax warehouse within the territory of a Member State through the territory of the country to a customs office within the territory of another Member State which supervises the actual exit of those goods outside the territory of the European Union;
- 6) from a tax warehouse keeper within the territory of the country to an acquirer within the territory of a Member State being an entity authorised by competent tax authorities of that Member State to receive excise goods under the excise duty suspension arrangement, or to entities exempt from excise duty under Article 31(1);
- 7) from a tax warehouse within the territory of a Member State to the place of their receipt by a registered consignee within the territory of the country, as specified in a proper authorisation, or to entities exempt from excise duty under Article 31(1);
- 8) through the territory of the country between tax warehouses within the territories of Member States;
- 9) through the territory of the country from a tax warehouse within the territory of a Member State to an acquirer within the territory of a Member State being an entity authorised by competent tax authorities of that Member State to receive excise goods under the excise duty suspension arrangement, or to entities exempt from excise duty under Article 31(1);
- 10) in the case of import and release for free circulation, from the place of importation within the territory of the country by a registered consignor to:
  - a) a tax warehouse within the territory of a Member State,
  - b) an acquirer within the territory of a Member State being an entity authorised by competent tax authorities of that Member State to receive excise goods under the excise duty suspension arrangement,
  - c) entities exempt from excise duty under Article 31(1),
  - d) a customs office within the territory of a Member State which supervises the actual exit of those goods outside the territory of the European Union;
- 11) in the case of import and release for free circulation, from the place of importation within the territory of a Member State by a registered consignor to:
  - a) a tax warehouse within the territory of the country,
  - b) the place of receipt of those goods by a registered consignee, as specified in a proper authorisation,
  - c) entities exempt from excise duty under Article 31(1),
  - d) a customs office within the territory of the country which supervises the actual exit of those goods outside the territory of the European Union,
  - e) a customs office within the territory of a Member State which supervises the actual exit of those goods outside the territory of the European Union, through the territory of the country.

2a. The excise duty suspension arrangement shall also apply, if within the movement of excise goods referred to in paragraph (2) those goods are moved through the territory of a third country.

3. (repealed).

4. (repealed).

5. <sup>98</sup> The excise duty suspension arrangement shall apply to the excise goods specified in Annex No. 2 hereto, including those taxed with zero excise rate due to their intended use, with prejudice to Article 47(1). In the case of excise goods falling within CN codes 2710 11 21, 2710 11 25, and 2710 19 29, the excise duty suspension arrangement shall apply, if those goods are moved in bulk.

6. The excise duty suspension arrangement shall apply within the territory of the country also to excise goods other than those specified in Annex No. 2 hereto, with excise duty rate other than zero rate, with prejudice to Article 47(1)(1) and (5).

7. The excise duty suspension arrangement shall not apply to electricity, gas products, coal products, and raw tobacco.

8. The excise duty suspension arrangement shall not apply in the case of the movement of excise goods between the territory of the country and the territory of a Member State for the needs of the armed forces referred to in Article 31(1)(4), if to that movement a procedure applies based directly on the North Atlantic Treaty, unless other provisions result from an agreement concluded with a European Union Member State.

#### **Article 41 [Conditions for Application of Excise Duty Suspension Arrangement Connected with Movement of Excise Goods]**

1. If the excise duty suspension arrangement is connected with movement of excise goods, the condition for its application shall be:

- 1) the use of the e-AD or the fallback e-AD;
- 2) the provision of excise guarantee in a competent customs office.

1a. <sup>99</sup> The condition to submit the excise guarantee referred to in paragraph (1)(2) shall not apply to the excise goods referred to in Annex No. 2 hereto taxed with zero excise rate due to their intended use.

2. If the excise duty suspension arrangement concerns intra-Community supply to an entity which is not a tax warehouse keeper, the condition to apply the excise duty suspension arrangement shall be an authorisation issued by the competent tax authorities of the Member State to receive the excise goods by the acquirer within the excise duty suspension arrangement, and in the case of entities exempt from excise duty under Article 31(1) – the use of the exemption certificate referred to in the Commission Regulation (EC) No. 1/96 of 10<sup>th</sup> January 1996 on the excise duty exemption certificate (OJ L 8, 11.01.1996, p. 11; OJ Polish

special edition, Chapter 9, v. 1, p. 297). The provision of paragraph (1) shall apply accordingly.

3. If the excise duty suspension arrangement concerns intra-Community acquisition by entities exempt from excise duty under Article 31(1), the condition to apply the excise duty suspension arrangement shall be the use of the exemption certificate referred to in the Commission Regulation (EC) No. 1/96 of 10<sup>th</sup> January 1996 on the excise duty exemption certificate. The provision of paragraph (1) shall apply accordingly.

4. If the excise duty suspension arrangement concerns the excise goods referred to in Article 40(6), the conditions referred to in paragraph (1) shall apply only to the movement of those goods within the territory of the country, and in the case of the movement of those goods within the territory of the country within intra-Community acquisition or supply, the condition for the application of the excise duty suspension arrangement shall be exclusively appending the commercial documents instead of the e-AD to the goods being moved.

5. With the movement of excise goods under the excise duty suspension arrangement no tax liability shall arise, and the tax obligation imposed on the taxpayer resulting from the performance of a specific activity subject to taxation shall expire upon the receipt by the taxpayer of:

- 1) the report of receipt or the fallback report of receipt, or
  - 2) <sup>100</sup> the report of export or the fallback report of export, or
  - 3) <sup>101</sup> the alternative proof of completion of the excise duty suspension arrangement
- in the part covered with the confirmation.

6. (repealed).

7. (repealed).

8. (repealed).

9. The excise duty suspension arrangement shall not apply to excise goods marked with excise stamps moved:

- 1) within intra-Community supply;
- 2) for the purpose of export;
- 3) <sup>102</sup> between tax warehouses within the territory of the country, except for the movement:
  - a) between tax warehouses of the same keeper,
  - b) from the tax warehouse of the producer of the excise goods who is not the owner of those goods to the tax warehouse of the owner of those goods,
  - c) from the tax warehouse of the producer of the excise goods who is not the owner of those goods to the tax warehouse to which the authorisation referred to in Article 54(1) held by the owner of those goods applies,

d) from the tax warehouse of the owner of the excise goods to another tax warehouse to which the authorisation referred to in Article 54(1) held by the owner of those goods applies.

10. <sup>103</sup> (repealed).

11. <sup>104</sup> (repealed).

12. <sup>105</sup> (repealed).

13. <sup>106</sup> (repealed).

14. (repealed).

15. In case of control or occurrence of another event during the movement of excise goods under the excise duty suspension arrangement which may have impact on the movement of the excise goods under that arrangement or the documenting thereof, the competent director of customs office shall enter information on the control performed or such an event into the System.

#### **Article 41a. [Beginning and Completion of Movement of Excise Goods under Excise Duty Suspension Arrangement]**

1. The movement of excise goods under the excise duty suspension arrangement shall begin upon:

1) the exit of the excise goods from the tax warehouse, in the cases referred to in Article 40(1)(1)(b) and (c), and Article 40(2)(1)-(9);

2) the release of the excise goods for free circulation, in the cases referred to in Article 40(1)(3) and Article 40(2)(10) and (11), provided that the data of the excise goods included in the customs declaration are consistent with the data included in the e-AD checked in terms of completeness and correctness of data and which is assigned a reference number.

2. The movement of excise goods under the excise duty suspension arrangement shall be ended upon:

1) the receipt of the excise goods by the receiving entity, in the cases referred to in Article 40(1)(1)(b), Article 40(1)(2)(a) and (c), Article 40(2)(1), (2), (6)-(9), Article 40(2)(10)(a)-(c), and Article 40(2)(11)(a)-(c);

2) the exit of the excise goods outside the territory of the European Union, in the cases referred to in Article 40(1)(1)(c), Article 40(1)(2)(b), Article 40(2)(3)-(5), Article 40(2)(10)(d), and Article 40(2)(11)(d) and (e).

3. The movement of excise goods under the excise duty suspension arrangement may begin after:

1) the dispatching entity sends the draft e-AD to the System and receives the e-AD from the System with an assigned reference number and checked in terms of completeness and correctness of data included in the document, or

2) the dispatching entity drafts the fallback e-AD and provides a copy thereof to the competent director of customs office.

3a. <sup>107</sup> In the case of movement of the excise goods taxed with zero excise rate due to their intended use referred to in Annex No. 2 hereto under the excise duty suspension arrangement, the draft e-AD should include the information that the moved goods are taxed with zero excise rate.

4. In the case referred to in paragraph (1)(2), the registered consignor shall send the draft e-AD to the System before the release of the excise goods covered by the e-AD for free circulation.

4a. <sup>108</sup> In the case of movement of energy products under the excise duty suspension arrangement with the use of a pipeline:

1) from the place of importation directly to a tax warehouse within the territory of the country, directly following the release for free circulation under simplified declaration within the meaning of the provisions of the customs law,

2) between tax warehouses within the territory of the country

– the dispatching entity shall send the draft e-AD to the System immediately following the completion of pumping.

5. The movement of excise goods under the excise duty suspension arrangement shall be made with an accompanied:

1) printout of the e-AD with the reference number assigned, or with other commercial document accompanied which contains the reference number assigned in the System to the e-AD concerning the movement of the particular excise goods, or

2) fallback e-AD.

6. <sup>109</sup> Upon the verification of the draft e-AD and before the e-AD is sent pursuant to Article 41b(1), it shall be automatically recorded that the general guarantee is charged with the excise duty amount, or the excise duty amount and the petrol fee amount, arising out of the quantity and nature of the moved excise goods other than those specified in Annex No. 2 hereto and taxed with zero excise rate due to their intended use, or that those goods are covered with a lump-sum guarantee.

7. If the System is unavailable, the dispatching entity, before the beginning of the movement of excise goods under the excise duty suspension arrangement, shall be obliged to:

1) <sup>110</sup> provide the competent director of customs office, along with the document referred to in paragraph (3)(2), a copy of the document confirming the provision of excise guarantee which will cover the tax liability, or the tax liability and the petrol fee, concerning the moved goods;

- 2) <sup>111</sup> submit to the competent director of customs office a declaration on the excise guarantee which will cover the tax liability, or the tax liability and the petrol fee, concerning the moved goods, on the expiry and the available amount of the general guarantee, or on the amount and validity of the lump-sum guarantee;
- 3) <sup>112</sup> submit to the competent director of customs office a declaration of the carrier or forwarder who provided the general guarantee, or of the receiving entity on the consent for the tax liability of the dispatching entity, or the tax liability of the dispatching entity and the petrol fee to the payment of which the dispatching entity may be obliged, to be covered with the excise guarantee – in the cases referred to in Article 63(3)(1) and Article 63(4).

#### **Article 41b. [Operation of System for Sending e-ADs]**

1. If the e-AD draft contains correct and complete data, it shall be automatically assigned with a reference number in the System, and then the document shall be automatically sent to the dispatching entity and to:
  - 1) the receiving entity, in the case of movements of excise goods within the territory of the country, or
  - 2) the competent authorities of the Member State of the receiving entity, in the case of intra-Community supply or export made by the customs office of export located in a Member States of the European Union.
2. If the e-AD draft contains incomplete or incorrect data, the information on the irregularities shall be sent automatically from the System to the dispatching entity.
3. The dispatching entity may cancel the e-AD until the beginning of movement of excise goods.
4. During the movement of excise goods, the dispatching entity may change the destination of the excise goods via the System.
5. Authorised bodies shall have the right to inspect the System at any time in order to check the conformity of the data contained in the e-AD with the factual circumstances, and the right to request the printout of the e-AD accompanying the excise goods moved with the reference number assigned or another commercial document in which the e-AD reference number is contained, and should the System be unavailable upon the beginning of the movement of the excise goods, those bodies shall have the right to request the fallback e-AD. The entity requested to provide the documents shall be obliged to provide them.
6. In the case of intra-Community acquisition of excise goods under the excise duty suspension arrangement, the e-AD shall be transferred to the System by the authorities of the Member State competent for the dispatching entity, and then automatically transferred to the receiving entity.



**Article 41c. [Receiving Entity Data in e-AD Draft]**

1. In the case of movement of energy products under the excise duty suspension arrangement by sea, the dispatching entity may refrain from stating the receiving entity in the e-AD draft, if that entity is not known at the moment when the e-AD draft is sent to the System.
2. Immediately upon the acquisition of the data of the receiving entity, no later however than upon the completion of the movement, the dispatching entity shall complete the data of the receiving entity in the System.

**Article 41d. [Change of Destination of Excise Goods]**

1. The dispatching entity shall be obliged to change the destination in the following cases:
  - 1) refusal to accept all or a part of the excise goods by the receiving entity following the completion of movement of those goods, or
  - 2) receipt of information from the System on refusal to export the excise goods outside the territory of the European Union, and should the System be unavailable – receipt of the fallback report of export stating the refusal to export the excise goods outside the territory of the European Union, or
  - 3) deprivation of the receiving entity stated in the fallback e-AD of authorisation to receive the excise goods under the excise duty suspension arrangement.
2. The receiving entity, following the receipt of the e-AD from the System, may inform that they may not or will not receive the excise goods.
3. The minister competent for public finance may determine with a regulation other cases in which the dispatching entity is obliged to change the destination of the excise goods, taking into account the need of proper and efficient functioning of the excise duty suspension arrangement.

**Article 41e. [Procedure Connected with Completion of Movement of Excise Goods under Excise Duty Suspension Arrangement]**

1. If information on the intention to control the received excise goods by the competent director of customs office is received from the System, the receiving entity shall be obliged to send a notification of the arrival of the moved excise goods to the System immediately following their receipt. The receiving entity shall not unload the goods until the control is carried out.
2. The receiving entity shall send the draft report of receipt to the System immediately after:
  - 1) the control of the received excise goods is carried out, or
  - 2) the excise goods are received, if until the receipt of those goods the entity does not receive information from the System on the intention to control the received excise goods
  - no later however than within 5 working days of the completion date of the movement.

3. <sup>113</sup> If the draft report of receipt contains complete and correct data, and, in the case of excise goods with excise duty rate other than zero rate, it is recorded that the general guarantee of the receiving entity is charged with the excise duty amount, or the excise duty amount and the petrol fee amount, arising out of the quantity and nature of the excise goods moved, or that those goods are covered with the lump-sum guarantee, or that the receiving entity is exempted from the obligation to submit excise guarantee with regard to those goods, the report of receipt shall be automatically sent from the System to the receiving entity and to:

- 1) the dispatching entity, in the case of movements of excise goods within the territory of the country, or
- 2) the competent authorities of the Member State of the dispatching entity, in the case of intra-Community acquisition.

3a. <sup>114</sup> If the draft report of receipt contains complete and correct data, and, in the case of excise goods with excise duty rate other than zero rate, it is not recorded that the general guarantee of the receiving entity is charged with the excise duty amount, or the excise duty amount and the petrol fee amount, arising out of the quantity and nature of the excise goods moved, or that those goods are covered with the lump-sum guarantee, or that the receiving entity is exempted from the obligation to submit excise guarantee with regard to those goods, the report of receipt shall be automatically sent from the System to the entities referred to in paragraph (3) after it is confirmed in the System by the competent director of customs office that the tax liability of the receiving entity, or the obligation to pay the petrol fee by that entity, concerning the goods moved, expired entirely or in part, and that they may no longer arise.

4. <sup>115</sup> If:

- 1) the draft report of receipt or the draft report of export made by the competent director of customs office contains incomplete or incorrect data, or
- 2) the System is used for the movement of excise goods with excise duty rate other than zero rate, and it is not possible to record that the general guarantee of the receiving entity is charged at the due amount, or that the excise goods are covered with the lump-sum excise guarantee of the receiving entity, or that the receiving entity is exempted from the obligation to submit excise guarantee with regard to those goods

– the information on the irregularities shall be sent automatically from the System to the receiving entity or the competent director of customs office, as appropriate.

5. In the case of export of excise goods by the customs office of exit located within the territory of the country, the report of export shall be created in the System based on the information received from the electronic system of export service which confirms the export of the goods outside the territory of the European Union. The report of export, following the verification in terms of completeness and correctness of the data contained therein, shall be automatically sent from the System to the dispatching entity or the authorities of the Member State competent for the dispatching entity.

6. In the case of intra-Community supply or export through the territory of a Member State of excise goods under the excise duty suspension arrangement, the System shall receive the report of receipt or report of export from the authorities of the Member State competent for the receiving entity, which shall then be automatically sent from the System to the receiving entity.

7. <sup>116</sup> Upon the registration in the System of:

- 1) the report of receipt – it shall be automatically recorded that the general guarantee of the dispatching entity is released from charge, or that the excise goods are released from the coverage with the lump-sum excise guarantee, or, in the case of receipt within the territory of the country of excise goods with excise duty rate other than zero rate, it shall be automatically recorded that the general guarantee of the receiving entity is charged with the excise duty amount, or the excise duty amount and the petrol fee amount, arising out of the quantity and nature of the excise goods received, or that those goods are covered with the lump-sum guarantee of the receiving entity, or that the receiving entity is exempted from the obligation to submit excise guarantee with regard to those goods;
- 2) the report of export – it shall be automatically recorded that the general guarantee is released from charge, or that the excise goods are released from the coverage with the lump-sum guarantee.

8. <sup>117</sup> In case of the absence of report of receipt or if the report of receipt confirms the supply of only a part of the excise goods moved to the receiving entity, the record of release:

- 1) of the general guarantee from charge, entirely or in part, shall be made in the System by the competent director of customs office, after they receive confirmation that the tax liability, or the obligation to pay the petrol fee, concerning the goods moved, expired entirely or in part, or that the tax liability may no longer arise;
- 2) of the goods from the coverage with the lump-sum guarantee shall be made in the System by the competent director of customs office, after they receive confirmation that the tax liability and the obligation to pay the petrol fee, concerning the goods moved, expired entirely, or that the tax liability may no longer arise.

9. The entity exempt from excise duty under Article 31(1) shall submit to the competent director of customs office the fallback report of receipt with the certificate of exemption within 5 days of the completion of the movement. The competent director of customs office shall immediately enter the report of receipt to the System on behalf of that entity.

#### **Article 41f. [Procedure in Case of Unavailability of System upon Beginning of Movement]**

1. The System is unavailable, if a user of the System notifies the Director of Customs Chamber in Łódź of the inability to send documents to the System, and the Director confirms the unavailability of the System.

2. After the System availability is restored, immediately after the e-AD is assigned a reference number under Article 41b(1), the document shall replace the fallback e-AD.

3. The dispatching entity shall store a copy of the fallback e-AD with the reference number assigned after the System availability is restored allocated to that fallback e-AD.
4. If the System is unavailable, the dispatching entity and the receiving entity shall provide the competent director of customs office with the information which they send to the System, if it is available.
5. If the System availability is restored, the dispatching entity and the receiving entity shall send to the System the information that could not have been sent earlier due to the System unavailability.
6. The minister competent for public finance may determine with a regulation the detailed rules for dispatching entities, receiving entities, and tax authorities in case of the System unavailability and after its availability is restored, taking into account the need to monitor the movement of excise goods under the excise duty suspension arrangement.

#### **Article 41g. [Procedure in Case of Unavailability of System upon Completion of Movement]**

1. <sup>118</sup> If upon the completion of the movement of excise goods under the excise duty suspension arrangement the System is unavailable or no e-AD is received until that completion, the receiving entity which provided the general guarantee the available amount of which covers the excise duty amount, or the excise duty amount and the petrol fee amount, arising out of the quantity and nature of the moved excise goods with excise duty rate other than zero rate, or which provided the lump-sum guarantee, or which is exempted from the obligation to submit excise guarantee covering those excise goods, shall provide the competent director of customs office with the fallback report of receipt confirming that the movement is completed, no later than within 5 days of the completion of the movement.
2. <sup>119</sup> The competent director of customs office, following the receipt of confirmation that the receiving entity referred to in paragraph (1) provided the general guarantee or the lump-sum guarantee covering the received excise goods, or was exempted from the obligation to submit excise guarantee covering those goods, shall send the received fallback report of receipt to the director of customs office competent for the dispatching entity, and in the case of intra-Community acquisition – to the authorities of the Member State competent for the dispatching entity. The director of customs office competent for the dispatching entity shall send the received fallback report of receipt to the dispatching entity.
3. If in the case of export of excise goods the System is unavailable or if no e-AD is received, the director of customs office which supervises the actual exit of those goods outside the territory of the European Union shall send the fallback report of export to the director of customs office competent for the dispatching entity or to the authorities of the Member State competent for the dispatching entity. The competent director of customs office shall send the received fallback report of export to the dispatching entity.

#### **Article 41h. [Provision of Current Information on Status of Movement of Excise Goods]**

1. The competent director of customs office, the dispatching entity, and the receiving entity shall be obliged to provide current information on the excise goods moved, if the information is not provided automatically by the System.
2. The minister competent for public finance shall determine with a regulation the detailed scope of information which pursuant to paragraph (1) should be provided to the System, and the cases when the information should be provided, taking into account the need to provide proper information on the excise goods moved.

#### **Article 42 [Completion of Excise Duty Suspension Arrangement. Excise Duty Refund]**

1. The excise duty suspension arrangement shall be completed:

- 1) on the day of exit of the excise goods from the tax warehouse outside the excise duty suspension arrangement, with prejudice to paragraph (1a); the tax liability shall not arise, and the tax obligation towards the tax warehouse keeper shall expired, if the tax obligation due to the activity referred to in Article 8(1)(5) arose;
- 2) on the day of consuming the excise good in the tax warehouse; the tax liability shall not arise, and the tax obligation shall expire, if the excise good was consumed for production of another excise good, also within the processes aimed directly at the production of that good; if the quantity of alcoholic beverage consumed to produce another excise good exceeds the acceptable levels of consumption of excise goods referred to in Article 85(1)(2)(1) or (2)(1)(b), the tax obligation shall not expire with regard to the quantity exceeding those levels, and the tax liability shall arise with regard to them on the day of exit of the produced excise good from the tax warehouse outside the excise duty suspension arrangement;
- 3) <sup>120</sup> if the dispatching entity does not receive the report of receipt or the fallback report of receipt, the report of export or the fallback report of export, or the alternative proof of completion of the excise duty suspension arrangement, if the movement was made within the territory of the country, as the case may be, within 2 months of the dispatch date of the excise goods – the day after the said period expires;
- 4) <sup>121</sup> if the dispatching entity does not receive the report of receipt or the fallback report of receipt, the report of export or the fallback report of export, or the alternative proof of completion of the excise duty suspension arrangement, if the movement was made within intra-Community supply or within export through the territory of a Member State, as the case may be, within 4 months of the dispatch date of the excise goods – the day after the said period expires;
- 5) on the day of violating the conditions of the excise duty suspension arrangement other than those specified in sub-paragraphs (3) and (4), and if the day of violation may not be determined – on the day when such violation was detected by competent authority;
- 6) in the case of losses of excise goods or total destruction of the excise goods referred to in Article 2(1)(20) – on the day on which the losses of excise goods arose or those goods

were totally destroyed, and if that day may not be determined – on the day when such losses of excise goods or their total destruction was detected by competent authority;

7) in the case of intra-Community supply or export of the excise goods referred to in Article 40(6) – on the day on which the dispatching entity which made the intra-Community supply or the export of those goods receives the commercial document or a different document confirming the supply of those goods within the territory of a Member State or exit of those goods outside the territory of the European Union; the tax liability shall not arise, and the tax obligation which arose due to the performance of a specific activity subject to taxation and which is imposed on the taxpayer upon the receipt by the taxpayer of that document shall expire, in the part covered with the confirmation;

8) if within 4 months of the dispatch date of the excise goods from the tax warehouse the dispatching entity does not receive the document referred to in sub-paragraph (7) with the confirmation of supply of those excise goods within the territory of a Member State, or of export of those goods outside the territory of the European Union, if the movement was made within intra-Community supply or within export through the territory of a Member State – the day after the said period expires.

1a. <sup>122</sup> In the case of the re-entry to the tax warehouse of excise goods exempt from excise duty due to their intended use, unsupplied from the tax warehouse to the intermediary entity or from the tax warehouse to the consuming entity, moved based on the document of supply, it shall be deemed that there was no violation of exemption conditions and no completion of the excise duty suspension arrangement with regard to those goods.

1b. <sup>123</sup> In the case of the re-entry to the tax warehouse of the excise goods referred to in Annex No. 2 hereto taxed with zero rate excise duty due to their intended use, unsupplied to the entity which consumes those goods for purposes entitling to apply zero excise rate, moved based on the document of supply, it shall be deemed that there was no completion of the excise duty suspension arrangement with regard to those goods.

2. If, with regard to excise goods moved under the excise duty suspension arrangement through the territory of the European Union:

1) the conditions of that arrangement are violated within the territory of the country, which results in the completion of the arrangement, or

2) the place of violation of the conditions of the excise duty suspension arrangement may not be determined, and that violation is detected within the territory of the country

- the competent director of customs office shall collect excise duty calculated with application of excise duty rates fixed as of the day on which the violation was committed, or if that day may not be determined – fixed as of the day on which the violation was detected.

3. The competent director of customs office referred to in paragraph (2) shall notify, via the System, the competent tax authorities of the Member State from the territory of which the

dispatch was made of the violation of the excise duty suspension arrangement and of the arising of the tax liability within the territory of the country.

4. The dispatching entity which received:

- 1) <sup>124</sup> the report of receipt or the fallback report of receipt, the report of export or the fallback report or export, or the alternative proof of completion of the excise duty suspension arrangement after the periods referred to in paragraph (1)(3) and (4) expire, or
- 2) the documents confirming the payment of excise duty within the territory of the Member State in which the violation of the conditions of the excise duty suspension arrangement was committed or detected, at the amount corresponding to the quantity of excise goods concerned by the violation, or
- 3) the document referred to in paragraph (1)(7) with the confirmation of supply within the territory of a Member State or the export outside the territory of the European Union of excise goods after the period referred to in paragraph (1)(8) expires

- shall be entitled to refund of the excise duty amount paid by that entity on those goods within the territory of the country upon their written request submitted to the competent director of customs office.

5. The request referred to in paragraph (4) may be submitted within 5 years, counting from the end of the calendar year in which the excise duty payment date expired.

6. If, as a result of finding the violation of the conditions of the excise duty suspension arrangement which results in the completion of the arrangement, excise duty is collected within the territory of a Member State, and before the expiry of 3 years from the date on which the movement began it is ascertained that the violation of those conditions was actually committed within the territory of the country, the competent director of customs office shall collect excise duty calculated with application of excise duty rates fixed as of the day on which the conditions of the excise duty suspension arrangement resulting in the completion of the arrangement were violated within the territory of the country.

7. The competent director of customs office referred to in paragraph (6) shall be obliged to notify the competent tax authorities of the Member State in which the excise duty was collected due to finding the violation of the conditions of excise duty suspension arrangement which resulted in the completion of that arrangement of the fact of violating those conditions and of the collection of excise duty within the territory of the country.

8. If, as a result of finding the violation of the conditions of the excise duty suspension arrangement which results in the completion of the arrangement, the tax liability arose within the territory of the country, and before the expiry of 3 years from the date on which the movement began it is ascertained that the violation of those conditions was actually committed within the territory of a Member State, then if the excise duty:

- 1) was collected within the territory of the country – the entity which paid the excise duty within the territory of the country shall be entitled to refund of the excise duty,

2) was not collected within the territory of the country entirely or in part – the tax liability arisen shall be remitted entirely or in part corresponding to the amount of the excise duty uncollected

- provided that the excise duty was paid within the territory of a Member State.

9. In the case referred to in paragraph (8), the excise duty shall be refunded upon written request of the entity submitted to the competent director of customs office with documents confirming the payment of the excise duty within the territory of a Member State and the territory of the country, within 5 years counting from the end of the calendar year in which the excise duty payment date expired within the territory of the country.

#### **Article 43 [Delegation of Legislative Powers]**

1. The minister competent for public finance may determine with a regulation:

- 1) (repealed);
- 2) (repealed);
- 3) (repealed);
- 4) <sup>125</sup> (repealed);
- 5) (repealed);
- 6) detailed conditions and procedure of excise duty refund in the cases referred to in Article 42(4) and (8);
- 7) (repealed).

2. The minister competent for public finance, while issuing the regulation referred to in paragraph (1), shall take into account:

- 1) <sup>126</sup> (repealed);
- 2) the need of effective functioning of the excise duty suspension arrangement;
- 3) <sup>127</sup> (repealed);
- 4) <sup>128</sup> the need to provide for the flow of information on the excise goods moved;
- 4a) <sup>129</sup> the need of the proper determination of the amounts of the excise duty refunded;
- 5) the provisions of the European Union law on excise duty.

3. The minister competent for public finance shall determine with a regulation which data subject to discretionary powers of the Member States shall be included in the e-AD or the fallback e-AD obligatorily, taking into account the provisions of the Commission Regulation (EC) No. 684/2009 of 24<sup>th</sup> July 2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty.



#### **Article 44 [Moment of Completion of Suspension Arrangement]**

1. The excise duty suspension arrangement shall be also completed on the day:

- 1) on which the authorisation for operating a tax warehouse or for dispatch of excise goods as registered consignor is withdrawn;
- 2) on which the period for which the authorisation for operating a tax warehouse or for dispatch of excise goods as registered consignor expires, if the entity failed to obtain a new authorisation before that period expires;
- 3) on which the tax warehouse keeper or the registered consignor ceased to perform activities subject to taxation with excise duty;
- 4) on which the enterprise of the tax warehouse keeper or the registered consignor is liquidated;
- 5) on which the excise guarantee expires, if before the expiry date the tax warehouse keeper or the registered consignor failed to submit a new excise guarantee, or the tax warehouse keeper failed to obtain exemption from the obligation to submit excise guarantee referred to in Article 64(1);
- 6) <sup>130</sup> on which the exemption from the obligation to submit excise guarantee referred to in Article 64(1) expired, if before the expiry date the tax warehouse keeper failed to submit the excise guarantee, or to obtain prolongation of the exemption, with prejudice to Article 64(5a).

2. In the cases referred to in paragraph (1), the tax warehouse keeper shall be obliged to:

- 1) make a physical inventory of the excise goods, hereinafter referred to as the “physical inventory”, according to the status as of the date of completion of the excise duty suspension arrangement, within 21 days of that day;
- 2) notify the competent director of customs office of making the physical inventory and the determined quantity of the excise goods, and the amount of excise duty to be paid on those goods, within 7 days of the date of completing the physical inventory, no later however than within the time limit set forth for the submission of tax return and excise duty payment referred to in Article 21(2).

3. If the physical inventory is not made within the time limit specified in paragraph (2)(1) or it is made in an unreliable manner, the competent director of customs office shall determine:

- 1) the quantity of the excise goods by estimation;
- 2) the amount of the excise tax liability.

#### **Article 45 [Date of Arising of Tax Liability. Excise Duty Rate Amount]**

1. If the excise duty suspension arrangement is applied, the tax liability shall arise on the completion date of the arrangement, unless otherwise set out by this Act.

2. If the excise duty suspension arrangement is applied, the amount of the tax liability shall be calculated with application of excise duty rate fixed as of the completion date of the excise duty suspension arrangement.

#### **Article 46 [System of Movement of Excise Goods]**

1. The System shall be administered by the minister competent for public finance.
2. The users of the System shall be tax warehouse keepers, registered consignors, registered consignees, entities exempt from excise duty under Article 31(1), and tax authorities.
3. A registered consignor, a registered consignee, or a tax warehouse keeper shall each time affix electronic signature to the documents sent to the System.
4. A document sent to the System shall be verified in terms of completeness and correctness of the data, and in particular in terms of consistency of the data with the data from the records referred to in Article 18(3).
5. After a document is sent to the System, the confirmation of receipt including the time of receipt shall be automatically sent to the entity which sent the document.
6. The records of all movements of excise good under the excise duty suspension arrangement shall be kept in the System.
7. Irregularities found in the System resulting from the non-conformity of the activities made in the System with the provisions hereof or of implementing legislation issued based hereupon shall be removed ex officio or upon request submitted to the competent director of customs office by the dispatching entity or the receiving entity. Refusal to accept the request shall be made with a decision.
8. The minister competent for public finance shall determine with a regulation:
  - 1) the manner of communication of the users with the System, in particular the manner to sign the documents sent to the System by e-mail, and the manner of access of the users to the System;
  - 2) the structure of the local reference number;
  - 3) the conditions and manner of provision of data by entities to the competent director of customs office to enter them into the System.
9. The minister competent for public finance, while issuing the regulation referred to in paragraph (8), shall take into account the need:
  - 1) of effective functioning of the excise duty suspension arrangement;
  - 2) to provide for proper control of the excise goods;
  - 3) to provide for the flow of information on the movement of excise goods on which excise duty is not paid;
  - 4) to provide for the security of the information sent.

## **Chapter 2**

### **Tax Warehouses**

#### **Article 47 [Place of Production, Storage, and Reloading of Excise Goods]**

1. <sup>131</sup> Production of the excise goods specified in Annex No. 2 hereto, including those taxed with zero excise rate due to their intended use, and of excise goods other than those specified in Annex No. 2 hereto taxed with excise duty rate other than zero rate, may take place exclusively in a tax warehouse, except for production of:

- 1) excise goods, only with the use of excise goods on which excise duty was paid at the amount equal to or higher than the excise duty amount payable on the produced excise goods, or only with the use of excise goods exempt from excise duty due to their intended use, provided that the produced good is also an excise good exempt from excise duty due to its intended use;
- 2) less than 1000 hectolitres of wines per calendar year made of grapes from own crops referred to in Article 17(3) of the Act of 12<sup>th</sup> May 2011 on Production and Bottling of Wine Products, Trading Therein, and Organisation of Wine Market (Journal of Laws No. 120, item 690, and No. 171, item 1016, and of 2014, item 23);
- 3) home-made beer, wine, and fermented beverages made by natural persons for their own use and not intended for sale;
- 4) less than 10 hectolitres of ethyl alcohol per calendar year made by distilleries legally and economically independent from any other distilleries and not operating based on a licence acquired from another entity;
- 5) excise goods on which excise duty prepayment was made;
- 6) electricity;
- 7) coal products;
- 8) raw tobacco;
- 9) gas products.

2. Storage of excise goods under the excise duty suspension arrangement may take place exclusively in a tax warehouse.

3. <sup>132</sup> Within a tax warehouse, excise goods under the excise duty suspension arrangement may be stored in one room with other goods, provided that the excise goods under the excise duty suspension arrangement are stored separately and the place of their storage is stated in the records of excise goods kept by the tax warehouse keeper.

3a. <sup>133</sup> Within a tax warehouse, both excise goods not under the excise duty suspension arrangement and goods not being excise goods may be stored, provided that:

- 1) the conditions specified in paragraph (3) are met;

- 2) the manner of storage allows for determination of the quantity of the excise goods not under the excise duty suspension arrangement and of the goods not being excise goods.
4. Reloading of excise goods moved under the excise duty suspension arrangement may take place exclusively in a tax warehouse, except for:
- 1) situations of unforeseeable circumstances in which the reloading is possible only in the place of the unforeseeable circumstances;
  - 2) <sup>134</sup> situations in which the means of transport is changed, and the reloaded excise goods are entirely moved to one place of receipt stated in the e-AD or the fallback e-AD, and in the case of excise goods other than those specified in Annex No. 2 hereto taxed with excise duty rate other than zero rate, moved within the territory of the country within intra-Community acquisition or supply – to one place of receipt stated in the commercial document.
5. <sup>135</sup> (repealed).
6. An entity making intra-Community acquisition of grape wines produced outside a tax warehouse shall be obliged to notify the competent director of customs office of the receipt of those wines and provide the commercial document accompanying the wine products based on which they were moved within the territory of the country.

#### **Article 47a. [Storage of Energy Products in Tax Warehouse]**

<sup>136</sup>

1. Within a tax warehouse, energy products classified within the same CN code with different physico-chemical parameters may be stored in one container, provided that the physico-chemical parameters have no impact on the excise duty rate.
2. The provision of paragraph (1) shall not apply to the propane-butane gases (LPG) falling within CN code 2711, which may be stored in one container regardless of the CN codes within which they are classified and their physico-chemical parameters.
3. Within a tax warehouse, the following energy products may be stored in one container: those under the excise duty suspension arrangement, those exempt from excise duty due to their intended use, those taxed with zero rate excise duty due to their intended use, and those with excise duty paid, provided that:
  - 1) losses within the meaning hereof and other losses of those goods are settled proportionately to their quantity and storage period;
  - 2) the records of excise goods kept by the tax warehouse keeper allows for identification of those goods.

#### **Article 48 [Prerequisites to Grant Authorisation for Operating a Tax Warehouse]**

1. An authorisation for operating a tax warehouse shall be issued to an entity which meets jointly the following conditions:

- 1) it conducts at least one type of economic activity consisting in production, reloading, or storage of excise goods, including those belonging to other entities;
- 2) it is a taxpayer of the tax on goods and services;
- 3) it is an entity whose activity is managed by persons not sentenced with a final and conclusive judgement of a court for an offence against reliability of documents, property, economic circulation, turnover of money and securities, or for a fiscal offence;
- 4) <sup>137</sup> it has no arrears in customs and taxes constituting the revenue of the State budget, contributions for social security and health care, and it is not subject to enforcement, liquidation or insolvency proceedings;
- 5) it submits excise guarantee, with prejudice to Article 64(1);
- 6) no authorisation referred to in Article 84(1) granted to it has been withdrawn due to the violation of the provisions of law, nor has been any concession or authorisation for conducting economic activity withdrawn, nor has been any decision issued on the prohibition to conduct thereby regulated economic activity within the meaning of the provisions of the Act of 2<sup>nd</sup> July 2004 on Freedom of Economic Activity (Journal of Laws of 2013, item 672, as amended), with regard to excise goods;
- 7) it holds the legal title to use the premises in which the tax warehouse is to be operated.

2. The provision of paragraph (1)(2) shall not apply to farmers applying for an authorisation for operating a tax warehouse in which, pursuant to the Act of 25<sup>th</sup> August 2006 on Biocomponents and Liquid Biofuels (Journal of Laws of 2013, item 1164), only activities are to be performed consisting in the production of the ester or pure vegetable oil referred to in Article 2(1)(11)(c) of that statute for own use.

3. <sup>138</sup> In the case of an entity applying for an authorisation for conducting economic activity in the tax warehouse consisting exclusively in the storage or reloading of excise goods produced in another tax warehouse, an additional condition to those specified in paragraph (1), with prejudice to paragraph (4), shall be:

- 1) for manufactured tobacco – the minimum amount of excise duty which would be due on the goods, if those goods were not under the excise duty suspension arrangement, in the tax warehouse in which the activity is to be conducted based on the authorisation issued, amounts to PLN 222 million in a calendar year;
- 2) for alcoholic beverages – the minimum amount of excise duty which would be due on the goods, if those goods were not under the excise duty suspension arrangement, in the tax warehouse in which the activity is to be conducted based on the authorisation issued, in a calendar year amounts to:
  - a) for ethyl alcohol – PLN 23 million,
  - b) for wine and fermented beverages – PLN 3 million,
  - c) for intermediate products – PLN 5 million,
  - d) for beer – PLN 8 million;

3) for energy products, except for the products referred to in sub-paragraphs (4)-(6) – the storage capacity for those products in the tax warehouse in which the activity is to be conducted based on the authorisation issued, amounts to at least 2500 m<sup>3</sup>;

4) for lubricating oil – the minimum amount of excise duty which would be due on the goods, if those goods were not under the excise duty suspension arrangement, in the tax warehouse in which the activity is to be conducted based on the authorisation issued, amounts to PLN 600 thousand in a calendar year;

5) for gas – the storage capacity for those products in the tax warehouse in which the activity is to be conducted based on the authorisation issued, amounts to at least 250 m<sup>3</sup>;

6) for jet gasoline falling within CN code 2710 11 31, gasoline type jet fuel falling within CN code 2710 11 70, jet fuel falling within CN code 2710 19 21, and other kerosene falling within CN code 2710 19 25 – the storage capacity for those products in the tax warehouse in which the activity is to be conducted based on the authorisation issued, amounts to at least 400 m<sup>3</sup>.

4. <sup>139</sup> In the cases referred to in paragraphs (3)(1), (2) and (4), the condition for the issue of the authorisation for operating a tax warehouse shall be for the entity to submit a declaration that in the tax warehouse in which the activity is to be conducted based on the authorisation issued, the amount of excise duty which would be due on the goods stored or reloaded, if those goods were not under the excise duty suspension arrangement, will achieve in a calendar year the minimum levels specified in paragraphs (3)(1), (2) or (4). If the authorisation for operating a tax warehouse is issued during the calendar year, the minimum amount of excise duty shall be calculated proportionately to the number of the remaining months of the calendar year.

4a. <sup>140</sup> In the case of a logistics operator who applies for the issue of an authorisation for conducting economic activity in the tax warehouse consisting in the storage or reloading of excise goods produced in another tax warehouse the condition for the issue of the authorisation, additionally to the conditions specified in paragraph (1), shall be the following minimum market value of all goods involved in the activity of that entity as a logistics operator, including of excise goods in one place of storage in the tax warehouse or outside the tax warehouse:

1) for manufactured tobacco – PLN 350 million;

2) for alcoholic beverages – PLN 50 million;

3) for lubricating oils – PLN 10 million.

4b. <sup>141</sup> A logistics operator shall be deemed to be an entity conducting activity consisting in providing comprehensive service to other entities in the area of storage, reloading, carriage, and packaging of goods owned by the entities provided with the service.

4c. <sup>142</sup> The market value referred to in paragraph (4a) shall be deemed to be the total amount which the acquirer would pay for those goods to an independent seller within the territory of the country under conditions of fair competition. If a comparable sale may not be determined,

the market value shall be deemed to be the amount not lower than the purchase price of similar goods, and if there is no purchase price, the cost of their production.

4d. <sup>143</sup> In the case referred to in paragraph (4a), the condition for the issue of the authorisation for operating a tax warehouse shall be for the logistics operator to submit a declaration that the minimum market value of all goods involved in the activity of the operator will achieve in a calendar year the minimum levels specified in paragraphs (4a)(1)-(3). If the authorisation for operating a tax warehouse is issued during the calendar year, the minimum market value shall be calculated proportionately to the number of the remaining months of the calendar year.

5. In the case of an entity conducting activity in the tax warehouse consisting only in the reloading of railway tank wagons with liquid gas, the condition referred to in paragraph (3)(5) shall not apply, if the liquid gas reloaded is to be moved under the excise duty suspension arrangement.

6. <sup>144</sup> The keeper of the tax warehouse in which excise goods are produced, may store and reload in that warehouse excise goods covered with the authorisation for operating a tax warehouse, also when they are produced by another entity, without the need to meet the conditions referred to in paragraphs (3) and (4).

7. <sup>145</sup> If a change of the authorisation for operating a tax warehouse concerns the change of the group of the excise goods referred to in Article 2(1)(1) which are involved in the activity in the tax warehouse, and as a result the excise guarantee provided by the tax warehouse keeper, following the authorisation change, would not provide cover at the due amount for the tax liability amount, or the tax liability amount and the petrol fee amount, the condition for the authorisation change shall be to provide additional or new excise guarantee, with prejudice to Article 64(1).

8. <sup>146</sup> To the change of authorisation the provisions of paragraphs (3)-(4d) shall apply accordingly.

9. <sup>147</sup> The condition for the tax warehouse keeper to make intra-Community acquisition of the motor fuels specified in Annex No. 2 hereto the production of which or the turnover of which requires a concession pursuant to the provisions of the Act of 10<sup>th</sup> April 1997 – the Energy Law, which acquisition is for the benefit of another entity obliged to obtain that concession or the entry to the register of the system of intervention reserves referred to in the Act of 16<sup>th</sup> February 2007 on Reserves of Oil, Petroleum Products, and Natural Gas, and Procedures in Situations of Risk to Fuel Safety of State and Oil Market Distortions, shall be for that entity to hold the required concession or to be entered to the register of the system of intervention reserves.

10. <sup>148</sup> The tax warehouse keeper, within 3 days of the expiry of the month, shall notify the President of the Material Reserves Agency of the entities for the benefit of which they made intra-Community acquisitions of the motor fuels referred to in paragraph (9) in that month and of the fuels acquired.

11. <sup>149</sup> The information referred to in paragraph (10) should include in particular the given name and surname or the business name of the entity, the place of residence or the address of

the seat of the entity, the entity's tax identification number (NIP) or the statistical identification number (REGON), and the nature, the CN code, and the quantity of the fuel acquired.

#### **Article 48a. [Requirements for Place of Storage of Excise Goods in Tax Warehouse]**

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1. The place of storage of excise goods in a tax warehouse should be adjusted to store those goods safely, and the proposed location of the tax warehouse, the condition or size of the rooms in which the tax warehouse is to be operated, or their equipment, should allow for control to be exercised.
2. An authorisation for operating a tax warehouse may be granted following the approval of verification documents as the result of the official check referred to in Article 64 of the Act of 27<sup>th</sup> August 2009 on Customs Service (Journal of Laws of 2015, item 990, as amended).
3. A change of the authorisation for operating a tax warehouse may be made following the approval of verification documents as the result of the official check referred to in Article 64 of the Act of 27<sup>th</sup> August 2009 on Customs Service, with regard to the change.

#### **Article 49 [Procedure of Granting Authorisation for Operating a Tax Warehouse. Notification of Authorisation Data Change]**

1. An authorisation for operating a tax warehouse shall be issued by the competent director of customs office upon written request of the entity.
2. An authorisation for operating a tax warehouse may be issued for a definite period of time, no longer than 3 years, or for an indefinite period of time.
3. The request for granting the authorisation for operating a tax warehouse should include the data of the entity and the economic activity conducted thereby, in particular the given name and surname or the business name of the entity, their address of seat or place of residence, the number in the National Court Register or the register of economic activity, the statistical identification number (REGON), the tax identification number (NIP), the e-mail address, and the type and scope of activity to be conducted in the tax warehouse, as well as the planned location of the tax warehouse, the proposed excise guarantee, and the number of tax warehouses operated already by the entity.
4. The provision of paragraph (3) as regards the number in the National Court Register or the register of economic activity, shall not apply to farmers applying for an authorisation for operating a tax warehouse in which, pursuant to the Act of 25<sup>th</sup> August 2006 on Biocomponents and Liquid Biofuels, only activities are to be performed consisting in the production of the ester or pure vegetable oil referred to in Article 2(1)(11)(c) of that statute for own use.



5. The request for granting an authorisation for operating the first tax warehouse shall also constitute a request for granting the entity with the excise number of the tax warehouse keeper.
6. <sup>151</sup> The request referred to in paragraph (1) shall be appended with the plan of the tax warehouse, the documents confirming that the conditions set out in Article 48 are met, and the documents specified in the implementing legislation issued based upon Article 64(9) of the Act of 27<sup>th</sup> August 2009 on Customs Service which are required to conduct the official check.
7. <sup>152</sup> The tax warehouse keeper shall be obliged to notify the competent director of customs office of any change of the data included in the request referred to in paragraph (1), within 7 days of the day on which the change occurred, with prejudice to paragraphs (8) and (10).
8. <sup>153</sup> The notification on a planned change of the data included in the authorisation shall be made before that change is made, with prejudice to paragraph (10).
9. The notification referred to in paragraph (8) shall constitute also a request for changing the authorisation for operating a tax warehouse with regard to the change notified.
10. A change of the tax warehouse location or of the tax warehouse keeper shall require a new authorisation for operating a tax warehouse, except for successors or transformed entities in the case of their entry into the rights or obligations provided for by the provisions of the tax law and set out in the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.
11. <sup>154</sup> (repealed).

**Article 50 [Tax Warehouse Excise Number. [Operative Part of Authorisation for Operating a Tax Warehouse]**

1. The competent director of customs office, while granting an authorisation for operating the first tax warehouse, shall with a separate decision assign the tax warehouse keeper with the tax warehouse keeper excise number.
2. A separate authorisation for operating a tax warehouse shall be granted and a separate tax warehouse excise number shall be issued for each tax warehouse.
3. The authorisation for operating a tax warehouse shall specify in particular the following:
  - 1) the tax warehouse excise number;
  - 2) the location address of the tax warehouse;
  - 3) the type of economic activity conducted in the tax warehouse;
  - 4) the nature of excise goods which are involved in the economic activity conducted in the tax warehouse;
  - 5) <sup>155</sup> the form and expiry date of the excise guarantee, and if the entity requesting the authorisation for operating a tax warehouse is exempted from the obligation to provide the guarantee – the expected maximum amount of the tax liability, or the expected

maximum amount of the tax liability and the petrol fee, subject to excise guarantee, and the expiry date of the exemption from the obligation to provide excise guarantee.

4. The competent director of customs office who issued the authorisation shall include in the authorisation the tax warehouse keeper excise number assigned pursuant to paragraph (1).

5. <sup>156</sup> (repealed).

#### **Article 51 [Obligation to Apply Excise Number]**

1. The tax warehouse keeper shall be obliged to include the excise number of the tax warehouse from which excise goods are removed in the e-AD or the fallback e-AD.

2. The tax warehouse keeper shall be obliged to include in the tax return the excise numbers of all tax warehouses to which that tax return applies.

#### **Article 52 [Refusal to Grant and Withdrawal of Authorisation for Operating a Tax Warehouse]**

1. The competent director of customs office shall refuse to grant the authorisation for operating a tax warehouse, if:

- 1) the entity requesting the authorisation for operating a tax warehouse does not meet the conditions referred to in Article 48(1), (3) or (4), whereby while assessing whether the condition referred to in Article 48(1)(6) is met, the period of the last 3 years shall be taken into account, counting from the date of submitting the request for authorisation;
- 2) the granting of the authorisation may cause any threat to significant public interest;
- 3) <sup>157</sup> the verification documents are not approved as the result of the official check referred to in Article 64 of the Act of 27<sup>th</sup> August 2009 on Customs Service.

2. The competent director of customs office shall withdraw the authorisation for operating a tax warehouse ex officio, if:

- 1) <sup>158</sup> (repealed);
- 2) the tax warehouse keeper conducts economic activity not in conformity with the provisions of the tax law or with the authorisation obtained;
- 3) <sup>159</sup> the excise guarantee of the tax warehouse keeper expired or does not provide any more for the cover, on time or at the amount due, of their tax liability, or their tax liability and the petrol fee to the payment of which the tax warehouse keeper may be obliged, and if the tax warehouse keeper is exempt from the obligation to provide excise guarantee – if that exemption expired, and the tax warehouse keeper failed to obtain a new authorisation on time or failed to provide excise guarantee at the amount due, with prejudice to Article 64(5a);
- 4) any of the conditions set out in Article 48 was violated, with prejudice to paragraph (3);

5) in the period of the first three months after the authorisation is obtained, the entity referred to in Article 48(4) failed to achieve the declared minimum turnover.

3. The competent director of customs office shall not withdraw the authorisation for operating a tax warehouse, if the tax warehouse keeper pays arrears in customs duty, taxes constituting the revenue of the State budget, contributions to social insurance and health care, within 7 days, counting from the day on which the arrears were ascertained, whereby if the amount of the tax liability is determined by a tax authority or a fiscal inspection authority – within 7 days, counting from the service date of the decision determining the tax liability amount.

4. The competent director of customs office shall withdraw the authorisation for operating a tax warehouse also upon request of the tax warehouse keeper.

5. In case of withdrawing the authorisation for operating a tax warehouse, or of the expiry of the period for which it was issued, and failing to issue a new authorisation before that period expires, the competent director of customs office shall send the information on withdrawal or expiry of that authorisation to the competent authority keeping the register of regulated economic activity, the registration authority referred to in Article 13(2) of the Act of 25<sup>th</sup> August 2006 on Biocomponents and Liquid Biofuels, the concession authority, or the authority granting authorisations for conducting economic activity, as the case may be.

### **Article 53**

1. (repealed).

2. (repealed).

3. (repealed).

4. (repealed).

4a. (repealed).

4b. (repealed).

5. <sup>160</sup> (repealed).

6. <sup>161</sup> (repealed).

7. <sup>162</sup> (repealed).

8. (repealed).

### **Article 54 [Authorisation for Dispatch of Excise Goods]**

1. The authorisation for dispatch of excise goods from someone else's tax warehouse outside the excise duty suspension arrangement by the taxpayer referred to in Article 13(3), hereinafter referred to as the “dispatch authorisation”, shall concern a specific tax warehouse and be issued for a definite period of time, no longer than 3 years, or for an indefinite period of time, upon request of the entity which meets jointly the conditions set out in Article 48(1)(2)-(6).

2. The request for the dispatch authorisation should include the data of the entity and the economic activity conducted thereby, in particular the given name and surname or the business name of the entity, the address of their seat or place of residence, the number in the National Court Register or the register of economic activity, the statistical identification number (REGON), the tax identification number (NIP), the e-mail address, and the nature of the excise goods, as well as the location address of the tax warehouse from which the excise goods are to be removed outside the excise duty suspension arrangement, and the excise number of that tax warehouses.

3. The request for the dispatch authorisation shall be appended with the written consent of the tax warehouse keeper for the storage of excise goods of the entity submitting the request in that tax warehouse, and with documents confirming that the conditions referred to in Article 48(1)(2)-(6) are met.

4. The dispatch authorisation shall specify in particular the following:

- 1) the address of the seat or place of residence of the taxpayer referred to in Article 13(3);
- 2) the location address of the tax warehouse from which the excise goods are to be removed outside the excise duty suspension arrangement and the excise number of that warehouse;
- 3) the nature of excise goods removed from the tax warehouse outside the excise duty suspension arrangement.

5. <sup>163</sup> The taxpayer referred to in Article 13(3) shall be obliged to notify the competent director of customs office of any change of the data included in the request referred to in paragraph (1), within 7 days of the day on which the change occurred, with prejudice to paragraphs (6) and (8).

6. <sup>164</sup> The notification on a planned change of the data included in the dispatch authorisation shall be made before that change is made, with prejudice to paragraph (8).

7. <sup>165</sup> The notification referred to in paragraph (6) shall constitute also a request for changing the dispatch authorisation with regard to the change notified. To the change of dispatch authorisation the provision of Article 48(7) shall apply accordingly.

8. A change of the tax warehouse keeper or the location of the tax warehouse to which the dispatch authorisation applies, or of the taxpayer referred to in Article 13(3), shall require a new dispatch authorisation, except for successors or transformed entities in the case of their entry into the rights or obligations provided for by the provisions of the tax law and set out in the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

9. <sup>166</sup> (repealed).

10. The competent director of customs office shall refuse to grant the dispatch authorisation, if:

- 1) the entity requesting the dispatch authorisation does not meet the conditions referred to in Article 48(1)(2)-(6), whereby while assessing whether the condition referred to in Article 48(1)(6) is met, the period of the last 3 years shall be taken into account, counting from the date of submitting the request for authorisation;

2) the granting of the dispatch authorisation may cause any threat to significant public interest.

11. The competent director of customs office shall withdraw the dispatch authorisation ex officio, if:

1) <sup>167</sup> (repealed);

2) the taxpayer conducts economic activity not in conformity with the provisions of the tax law or with the authorisation obtained;

3) any of the conditions set out in Article 48(1)(2)-(6) was violated, with prejudice to paragraph (12).

12. The competent director of customs office shall not withdraw the dispatch authorisation, if the taxpayer pays arrears in customs duty, taxes constituting the revenue of the State budget, contributions to social insurance and health care, within 7 days, counting from the day on which the arrears were ascertained, whereby if the tax liability is determined by a tax authority or a fiscal inspection authority – within 7 days, counting from the service date of the decision determining the obligation amount.

13. The competent director of customs office shall withdraw the dispatch authorisation also upon request of the taxpayer referred to in Article 13(3).

14. The taxpayer referred to in Article 13(3) shall be obliged to provide a copy of the dispatch authorisation to the tax warehouse keeper before the first exit of excise goods from that warehouse outside the excise duty suspension arrangement.

15. The tax warehouse keeper shall be obliged to provide the competent director of customs office with the written information containing the data of the excise goods and the entities which removed those goods from the tax warehouse under the authorisations for exit held, until the 10<sup>th</sup> day of the month following the month in which the goods were removed from the tax warehouse.

16. The competent director of customs office shall serve a copy of the decision on the change or withdrawal of the dispatch authorisation on the tax warehouse keeper of the tax warehouse from which excise goods were or could have been removed outside the excise duty suspension arrangement, specified in the dispatch authorisation.

## **Article 55 [Delegation of Legislative Powers]**

1. <sup>168</sup> (repealed).

2. <sup>169</sup> (repealed).

3. The minister competent for public finance may determine with a regulation the detailed conditions for reloading excise goods under the excise duty suspension arrangement outside a tax warehouse, taking into account the nature of the particular excise goods and the means of transport used to move those goods, the need of effective functioning of the excise duty suspension arrangement, and the provisions of the European Union law on excise duty.

4. <sup>170</sup> The minister competent for public finance may determine with a regulation, in the case of entities conducting in a tax warehouse activity consisting exclusively in storage or reloading of excise goods produced in another tax warehouse, situations other than that specified in Article 48(5) in which the conditions referred to in Article 48(3) need not be met, taking into account the specific nature of turnover of the particular excise goods, the technical capabilities with regard to conducting economic activity involving excise goods, the need to provide for proper control of excise goods, and the principles of safety of provision with liquid fuels within the territory of the country arising out of separate provisions.

### **Chapter 3**

#### **Intermediary Entity**

#### **Article 56 [Authorisation for Conducting Economic Activity as Intermediary Entity]**

1. An authorisation for conducting economic activity as intermediary entity shall be issued for a definite period of time, no longer than 3 years, or for an indefinite period of time, upon request of the entity which meets jointly the following conditions:

- 1) it is a taxpayer of the tax on goods and services;
- 2) it is an entity whose activity is managed by persons not sentenced with a final and conclusive judgement of a court for an offence against reliability of documents, property, economic circulation, turnover of money and securities, or for a fiscal offence;
- 3) <sup>171</sup> it has no arrears in customs and taxes constituting the revenue of the State budget, contributions for social security and health care, and it is not subject to enforcement, liquidation or insolvency proceedings;
- 4) it provided excise guarantee;
- 5) no authorisation referred to in Article 84(1) granted to it has been withdrawn due to the violation of the provisions of law, nor has been any concession or authorisation for conducting economic activity withdrawn, nor has been any decision issued on the prohibition to conduct thereby regulated economic activity within the meaning of the provisions of the Act of 2<sup>nd</sup> July 2004 on Freedom of Economic Activity, with regard to excise goods;

2. The request referred to in paragraph (1) should include the data of the entity and the economic activity conducted thereby, in particular the given name and surname or the business name of the entity, the address of their seat or place of residence, the number in the National Court Register or the register of economic activity, the statistical identification number (REGON), the tax identification number (NIP), the e-mail address, and the scope of activity to be conducted by the entity, as well as the proposed excise guarantee.

3. The request referred to in paragraph (1) shall be appended with documents confirming that the conditions specified in paragraph (1) are met.

4. The authorisation for conducting economic activity as intermediary entity shall specify in particular the following:

- 1) the number of the intermediary entity;
- 2) the address of the seat or place of residence of the intermediary entity;
- 3) the form and expiry date of the excise guarantee;
- 4) the scope of the activity;
- 5) the nature of the excise goods.

5. The intermediary entity shall be obliged to include their number in the document of supply.

6. <sup>172</sup> The intermediary entity shall be obliged to notify the competent director of customs office of any change of the data included in the request referred to in paragraph (1), within 7 days of the day on which the change occurred, with prejudice to paragraphs (7) and (9).

7. <sup>173</sup> The notification on a planned change of the data included in the authorisation shall be made before that change is made, with prejudice to paragraph (9).

8. <sup>174</sup> The notification referred to in paragraph (7) shall constitute also a request for changing the authorisation for conducting economic activity as intermediary entity with regard to the change notified. To the change of authorisation for conducting economic activity as intermediary entity the provision of Article 48(7) shall apply accordingly.

9. A change of the entity conducting economic activity as an intermediary entity shall require a new authorisation for conducting economic activity as intermediary entity, except for successors or transformed entities in the case of their entry into the rights or obligations provided for by the provisions of the tax law and set out in the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

10. <sup>175</sup> (repealed).

11. The competent director of customs office shall refuse to grant the authorisation for conducting economic activity as intermediary entity, if:

1) the entity requesting the authorisation for conducting economic activity as intermediary entity does not meet the conditions referred to in paragraph (1), whereby while assessing whether the condition referred to in paragraph (1)(5) is met, the period of the last 3 years shall be taken into account, counting from the date of submitting the request for authorisation;

2) the granting of the authorisation may cause any threat to significant public interest;

12. The competent director of customs office shall withdraw the authorisation for conducting economic activity as intermediary entity ex officio, if:

1) <sup>176</sup> (repealed);

2) the intermediary entity conducts economic activity not in conformity with the provisions of the tax law or with the authorisation obtained;

3) <sup>177</sup> the excise guarantee of the intermediary entity expired or does not provide any more for the cover, on time or at the amount due, of their tax liability, or their tax liability and the petrol fee to the payment of which the entity may be obliged;

4) any of the conditions specified in paragraph (1) was violated, with prejudice to paragraph (14).

13. The competent director of customs office shall withdraw the authorisation for conducting economic activity as intermediary entity upon request of the intermediary entity.

14. The competent director of customs office shall not withdraw the authorisation for conducting economic activity as intermediary entity, if the intermediary entity pays arrears in customs duty, taxes constituting the revenue of the State budget, contributions to social insurance and health care, within 7 days, counting from the day on which the arrears were ascertained, whereby if the tax liability is determined by a tax authority or a fiscal inspection authority – within 7 days, counting from the service date of the decision determining the obligation amount.

#### **Article 56a. [Storage of Goods by Intermediary Entity]**

<sup>178</sup> To the storage of goods by an intermediary entity the provision of Article 47a shall apply accordingly.

### **Chapter 4**

#### **Registered Consignees**

#### **Article 57 [Obtaining Status of Registered Consignee]**

1. The competent director of customs office, upon written request of the entity which meets the conditions specified in:

1) paragraph (2) and Article 48(1)(2)-(6) – shall issue an authorisation for acquisition of excise goods as registered consignee;

2) Article 48(1)(2)-(6) – shall issue an authorisation for a single acquisition of excise goods as registered consignee.

1a. The entity referred to in paragraph (1)(1) may obtain more than one authorisation for acquisition of excise goods as registered consignee.

2. The registered consignee, except for the registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee, shall be obliged to hold the legal title to use a separated premises designated for the receipt of excise goods, hereinafter referred to as the “place of receipt of excise goods”. The authorisation for acquisition of excise goods as registered consignee and the authorisation for a single



acquisition of excise goods as registered consignee may concern only one place of receipt of excise goods.

2a. <sup>179</sup> The place of receipt of excise goods should be adjusted to safe entry of those goods, and the proposed location of the place of receipt of those goods, the condition or size of the rooms in which the place is to be located, or their equipment, should allow for control to be exercised.

2b. <sup>180</sup> The authorisation for acquisition of excise goods as registered consignee, except for the authorisation for a single acquisition of excise goods as registered consignee, may be granted following the approval of verification documents as the result of the official check referred to in Article 64 of the Act of 27<sup>th</sup> August 2009 on Customs Service.

2c. <sup>181</sup> A change of the authorisation for acquisition of excise goods as registered consignee, except for the authorisation for a single acquisition of excise goods as registered consignee, may be made following the approval of verification documents as the result of the official check referred to in Article 64 of the Act of 27<sup>th</sup> August 2009 on Customs Service, with regard to the change.

3. The request for the authorisation for acquisition of excise goods as registered consignee should include the following:

- 1) the data of the entity and the economic activity conducted thereby, in particular the given name and surname or the business name of the entity, the address of their seat or place of residence, the number in the National Court Register or the register of economic activity, the statistical identification number (REGON), the tax identification number (NIP), the e-mail address, and the planned location of the place of receipt of excise goods;
- 2) the information on the nature of excise goods to be acquired within intra-Community acquisition;
- 3) the proposed excise guarantee;
- 4) the information on the number of authorisations for acquisition of excise goods as registered consignee issued to that entity.

3a. The request for the authorisation for a single acquisition of excise goods as registered consignee should include the following:

- 1) the data of the entity and the economic activity conducted thereby, in particular the given name and surname or the business name of the entity, the address of their seat or place of residence, the number in the National Court Register or the register of economic activity, the statistical identification number (REGON), the tax identification number (NIP), the e-mail address, and the planned location of the place of receipt of excise goods;
- 2) the information on the nature and quantity of excise goods to be acquired within intra-Community acquisition;
- 3) the proposed excise guarantee;

4) the data of the entity from which excise goods are to be acquired within intra-Community acquisition.

4. <sup>182</sup> The request referred to in paragraph (3) shall be appended with the plan of the place of receipt of excise goods, the documents confirming that the conditions specified in paragraph (2) and Article 48(1)(2)-(6) are met, and the documents specified in the implementing legislation issued based upon Article 64(9) of the Act of 27<sup>th</sup> August 2009 on Customs Service which are required to conduct the official check.

4a. The request referred to in paragraph (3a) shall be appended with documents confirming that the conditions set out in Article 48(1)(2)-(6) are met.

5. The authorisation for acquisition of excise goods as registered consignee may be issued for a definite period of time, no longer than 3 years, or for an indefinite period of time. The authorisation for a single acquisition of excise goods as registered consignee should be used on a one-off basis, within 3 months of the date of issue.

6. <sup>183</sup> The registered consignee shall be obliged to notify the competent director of customs office of any change of the data included in the request referred to in paragraph (3), within 7 days of the day on which the change occurred, with prejudice to paragraphs (7) and (9).

7. <sup>184</sup> The notification on a planned change of the data included in the authorisation for acquisition of excise goods as registered consignee shall be made before that change is made, with prejudice to paragraph (9).

8. <sup>185</sup> The notification referred to in paragraph (7) shall constitute also a request for changing the authorisation for acquisition of excise goods as registered consignee with regard to the change notified. To the change of the authorisation for acquisition of excise goods as registered consignee and the authorisation for a single acquisition of excise goods as registered consignee the provision of Article 48(7) shall apply accordingly.

9. A change of the place of receipt of excise goods or of the registered consignee shall require a new authorisation for acquisition of excise goods as registered consignee or a new authorisation for a single acquisition of excise goods as registered consignee, except for successors or transformed entities in the case of their entry into the rights or obligations provided for by the provisions of the tax law and set out in the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

10. <sup>186</sup> (repealed).

11. <sup>187</sup> To:

1) the refusal to issue the authorisation for acquisition of excise goods as registered consignee the provision of Article 52(1) shall apply accordingly;

2) the refusal to issue the authorisation for a single acquisition of excise goods as registered consignee the provision of Article 52(1)(1) and (2) shall apply accordingly;

3) the withdrawal or expiry of the authorisation for acquisition of excise goods as registered consignee and the authorisation for a single acquisition of excise goods as registered consignee the provision of Article 52(2)-(5) shall apply accordingly.

## **Article 58 [Registered Consignee Excise Number. Operative Part of Authorisation of Registered Consignee]**

1. The competent director of customs office, while issuing the authorisation for acquisition of excise goods as registered consignee or the authorisation for a single acquisition of excise goods as registered consignee, shall assign the entity the excise number of the registered consignee related to the place of receipt of excise goods.

2. The authorisation for acquisition of excise goods as registered consignee shall specify in particular the following:

- 1) the excise number of the registered consignee related to the place of receipt of excise goods;
- 2) the address of the seat or place of residence of the registered consignee;
- 3) the address of the place of receipt of excise goods;
- 4) the nature of the excise goods acquired within intra-Community acquisition;
- 5) the form and validity of the excise guarantee.

3. The authorisation for a single acquisition of excise goods as registered consignee shall specify in particular the following:

- 1) the excise number of the registered consignee related to the place of receipt of excise goods;
- 2) the address of the seat or place of residence of the registered consignee;
- 3) the data of the entity from which the excise goods are acquired within intra-Community acquisition;
- 4) the address of the place of receipt of excise goods;
- 5) the nature and quantity of the excise goods acquired within intra-Community acquisition;
- 6) the amount of the excise guarantee.

## **Article 59 [Registered Consignees – Restrictions]**

1. A registered consignee may not store or dispatch excise goods under the excise duty suspension arrangement.

2. <sup>188</sup> (repealed).

3. A registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee, may acquire excise goods within intra-Community acquisition for the benefit of other entities.

4. <sup>189</sup> (repealed).

5. <sup>190</sup> (repealed).

6. <sup>191</sup> (repealed).

7. The minister competent for public finance shall determine with a regulation:

1) <sup>192</sup> the detailed conditions concerning the place of receipt of excise goods acquired within intra-Community acquisition by a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee,

1a) <sup>193</sup> the detailed conditions for operating a tax warehouse, including the place where the excise goods are stored,

2) <sup>194</sup> (repealed)

- taking into account the need to provide for proper control, the specific nature of storage and production of the particular excise goods and trading therein, and the need to properly secure the excise goods from their exit from the tax warehouse in a manner contrary to the binding provisions. <sup>195</sup>

8. <sup>196</sup> The condition for the registered consignee to make intra-Community acquisition of the motor fuels specified in Annex No. 2 hereto the production of which or the turnover of which requires a concession pursuant to the provisions of the Act of 10<sup>th</sup> April 1997 – the Energy Law, which acquisition is for the benefit of another entity obliged to obtain that concession or the entry to the register of the system of intervention reserves referred to in the Act of 16<sup>th</sup> February 2007 on Reserves of Oil, Petroleum Products, and Natural Gas, and Procedures in Situations of Risk to Fuel Safety of State and Oil Market Distortions, shall be for that entity to hold the required concession or to be entered to the register of the system of intervention reserves.

9. <sup>197</sup> The registered consignee, within 3 days of the expiry of the month, shall notify the President of the Material Reserves Agency of the entities for the benefit of which they made intra-Community acquisitions of the motor fuels referred to in paragraph (8) in that month and of the fuels acquired.

10. <sup>198</sup> The information referred to in paragraph (9) should include in particular the given name and surname or the business name of the entity, the place of residence or the address of the seat of the entity, the entity's tax identification number (NIP) or the statistical identification number (REGON), and the nature, the CN code, and the quantity of the fuel acquired.

## **Chapter 5**

**(repealed)**

## **Article 60**

**(repealed).**

## **Article 61**

(repealed).

## **Article 62**

(repealed).

### **Chapter 5a**

#### **Registered Consignors**

#### **Article 62a. [Authorisation for Dispatch of Excise Goods as Registered Consignor]**

1. The competent director of customs office, upon written request of the entity which meets the conditions set out in Article 48(1)(2)-(6), shall issue an authorisation for dispatch of imported excise goods under the excise duty suspension arrangement within the economic activity, hereinafter referred to as the “authorisation for dispatch of excise goods as registered consignor”.

2. The request for the authorisation for dispatch of excise goods as registered consignor should include the following:

- 1) the data of the entity and the economic activity conducted thereby, in particular the given name and surname or the business name of the entity, the address of their seat or place of residence, the number in the National Court Register or the register of economic activity, the statistical identification number (REGON), the tax identification number (NIP) and the e-mail address;
- 2) the information on the nature of excise goods to be dispatched under the excise duty suspension arrangement;
- 3) the proposed excise guarantee;
- 4) the information on the number of authorisations for dispatch of excise goods as registered consignor issued to that entity.

3. The request shall be appended with documents confirming that the conditions set out in Article 48(1)(2)-(6) are met.

4. The authorisation for dispatch of excise goods as registered consignor may be issued for a definite period of time, no longer than 3 years, or for an indefinite period of time.

5. <sup>199</sup> The registered consignor shall be obliged to notify the competent director of customs office of any change of the data included in the request referred to in paragraph (1), within 7 days of the day on which the change occurred, with prejudice to paragraphs (6) and (8).

6. <sup>200</sup> The notification on a planned change of the data included in the authorisation for dispatch of excise goods as registered consignor shall be made before that change is made, with prejudice to paragraph (8).

7. <sup>201</sup> The notification referred to in paragraph (6) shall constitute also a request for changing the authorisation for dispatch of excise goods as registered consignor with regard to the change notified. To the change of authorisation for dispatch of excise goods as registered consignor the provision of Article 48(7) shall apply accordingly.

8. A change of the registered consignor shall require a new authorisation for dispatch of excise goods as registered consignor, except for successors or transformed entities in the case of their entry into the rights or obligations provided for by the provisions of the tax law and set out in the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

9. <sup>202</sup> (repealed).

10. <sup>203</sup> To:

- 1) the refusal to issue the authorisation for dispatch of excise goods as registered consignor the provision of Article 52(1)(1) and (2) shall apply accordingly;
- 2) the withdrawal or expiry of the authorisation for dispatch of excise goods as registered consignor the provision of Article 52(2)-(5) shall apply accordingly.

#### **Article 62b. [Registered Consignor Excise Number. Operative Part of Authorisation of Registered Consignor]**

1. The competent director of customs office, while issuing the authorisation for dispatch of excise goods as registered consignor, shall assign the entity the excise number of the registered consignor.

2. The authorisation for dispatch of excise goods as registered consignor shall specify in particular the following:

- 1) the registered consignor excise number;
- 2) the address of the seat or place of residence of the registered consignor
- 3) the nature of the excise goods dispatched;
- 4) the form and validity of the excise guarantee.

#### **Article 62c. [Registered Consignors – Restrictions]**

1. A registered consignor may not store excise good under the excise duty suspension arrangement.

2. A registered consignor shall be obliged to:

- 1) following the release of the excise goods for free circulation, dispatch the excise goods under the excise duty suspension arrangement;
- 2) <sup>204</sup> (repealed).

3. <sup>205</sup> (repealed).

4. <sup>206</sup> (repealed).

5. <sup>207</sup> (repealed).

6. <sup>208</sup> (repealed).

## **Chapter 6**

### **Excise Securities**

#### **Article 63 [Excise Securities]**

1. <sup>209</sup> The following entities shall be obliged to provide excise guarantee at the amount covering the tax liability arisen or which may arise, or the tax liability arisen or which may arise and the petrol fee the payment obligation of which arose or may arise:

- 1) a tax warehouse keeper;
- 2) a registered consignee;
- 3) a registered consignor;
- 4) a taxpayer referred to in Article 13(3);
- 5) the taxpayer referred to in Article 78(1);
- 6) an intermediary entity;
- 7) a tax representative;
- 8) <sup>210</sup> a tobacco intermediary entity, except for the foreign entrepreneur referred to in Article 20d(1)(c);
- 9) <sup>211</sup> an entity representing the foreign entrepreneur referred to in Article 20d(1)(c).

1a. <sup>212</sup> The obligation to provide excise guarantee shall not apply to excise goods taxed with zero excise rate due to their intended use.

2. <sup>213</sup> The excise guarantee may be provided for a definite or indefinite period of time, to guarantee the coverage of one or more tax liabilities, or one or more tax liabilities and one or more petrol fees.

3. Upon request of the entity obliged to provide excise guarantee, the competent director of customs office shall accept the excise guarantee in forms specified in Article 67(1)(1)-(3) provided instead of, or jointly with, that entity by:

- 1) <sup>214</sup> a carrier or forwarder – in the case of movement by them of excise goods of the entity obliged to provide excise guarantee under the excise duty suspension arrangement, to guarantee the coverage of tax liabilities and petrol fee which may arise with regard to those excise goods,

- 2) the owner of the excise goods,
- 3) the recipient of the excise goods,
- 4) all or some of the entities referred to in sub-paragraphs (1)-(3)

- at the amount covering the required value of the excise guarantee.

4. <sup>215</sup> In the case of movement of excise goods within the territory of the country between tax warehouses, and of supply of excise goods exempt from excise duty due to their intended use from a tax warehouse to an intermediary entity, the tax liability of the dispatching entity, or the tax liability of that entity and the petrol fee the payment obligation of which may arise with regard to those excise goods, may be, upon request of that entity, covered with the excise guarantee of the receiving entity provided within the territory of the country in the forms specified in Article 67(1)(1)-(3), upon the consent of the receiving entity.

5. <sup>216</sup> The person who provided the excise guarantee as specified in paragraph (3) or whose excise guarantee covers the tax liabilities of the dispatching entity, or its tax liabilities and the petrol fee the payment obligation of which may arise with regard to the excise goods moved as specified in paragraph (4), shall be liable with their entire property for the tax liabilities of the entity obliged to provide excise guarantee and the petrol fee to the payment of which that entity is obliged, including default interest, jointly and severally with that entity, up to the amount:

- 1) of the excise guarantee provided – in the case referred to in paragraph (3);
- 2) with which the general guarantee of the receiving entity was charged, or the amount of the tax liability, or the tax liability and the petrol fee, covered with the lump-sum guarantee of that entity, including default interest – in the case referred to in paragraph (4).

#### **Article 64 [Exemption from Obligation to Provide Excise Guarantee]**

1. The competent director of customs office shall exempt the tax warehouse keeper from the obligation to provide excise guarantee, if the tax warehouse keeper meets the following conditions:

- 1) it has the seat or place of residence within the territory of the country;
- 2) it applies the excise duty suspension arrangement for at least a year;
- 3) <sup>217</sup> its financial position and property held guarantee that the tax liabilities and the obligation to pay the petrol fee may be met;
- 4) <sup>218</sup> it has no arrears in customs and taxes constituting the revenue of the State budget, the petrol fee, contributions for social security and health care, and it is not subject to enforcement, liquidation or insolvency proceedings;
- 5) <sup>219</sup> it obliged itself to pay, upon the first written request of the competent director of customs office, the amount of excise duty and the amount of petrol fee payable due to the arising of the tax liability and the obligation to pay the petrol fee.



- 1a. The competent director of customs office shall exempt the taxpayer referred to in Article 13(3) from the obligation to provide excise guarantee, if that taxpayer meets the conditions referred to in paragraphs (1)(1) and (3)-(5).
2. The provisions of paragraphs (1)(2) and (3) shall not apply to farmers operating a tax warehouse in which, pursuant to the Act of 25<sup>th</sup> August 2006 on Biocomponents and Liquid Biofuels, only activities are performed consisting in the production of the ester or pure vegetable oil referred to in Article 2(1)(11)(c) of that statute for own use.
3. The exemption referred to in paragraphs (1) and (1a) shall be granted for a definite period of time, no longer than 2 years, with a decision, upon written request of the entity. Upon written request of the exempted entity, the exemption may be prolonged, with a decision, for further periods of no more than 2 years.
4. <sup>220</sup> The requests referred to in paragraph (3) should include the data of the entity and the economic activity conducted thereby, in particular the given name and surname or the business name, the place of residence or the address of the seat of the entity, as well as the expected maximum amounts of the tax liabilities and petrol fees subject to excise guarantee, and the period for or by which the exemption is to be granted or prolonged, as the case may be. The request for exemption submitted by a tax warehouse keeper should also include the type of economic activity conducted by the tax warehouse keeper in the tax warehouse.
5. The requests referred to in paragraph (3) shall be appended with documents confirming that the conditions specified in paragraph (1) are met.
- 5a. <sup>221</sup> If the entity exempt from the obligation to provide excise guarantee meeting the requirements specified in paragraphs (4) and (5) submits a request for the prolongation of the exemption no later than 3 months before the expiry of the exemption, the exemption shall apply until the date on which the decision of the competent director of customs office on prolongation of or refusal to prolong the exemption is served on that entity, no longer however than for 90 days from the date on which the exemption expires.
6. The exemption referred to in paragraph (1) shall not apply in the case of movement of excise goods under the excise duty suspension arrangement or exempt from excise duty due to their intended use.
7. The exemption referred to in paragraph (1) may be applied in the case of movement of petroleum-derived excise goods with a pipeline between tax warehouses operated by the same entity within the territory of the country.
8. An entity exempt from the obligation to provide excise guarantee shall be obliged to notify the competent director of customs office of any changes of the data included in the request for exemption from the obligation to provide excise guarantee, or in the request for the prolongation of the exemption, within 7 days, counting from the day on which the change occurred.

9. The competent director of customs office shall withdraw the exemption referred to in paragraph (1) or (1a), if the entity which was granted the exemption violates any of the conditions referred to in paragraphs (1)(1), (3) or (4).

10. <sup>222</sup> The minister competent for public finance shall determine with a regulation the manner to document that the conditions specified in paragraph (1) are met, including the types of documents confirming that the conditions are met, the template of the requests referred to in paragraph (3), and the detailed manner of granting, prolonging, and withdrawing the exemption referred to in paragraphs (1) and (1a), taking into account the need for the proper security of tax liabilities and the petrol fee, and the need to provide for the flow of information on exemptions from the obligation to provide excise guarantee.

## **Article 65 [General Guarantee and Lump-Sum Guarantee]**

1. The entities obliged to provide excise guarantee:

- 1) a tax warehouse keeper,
- 2) a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee,
- 3) a registered consignor,
- 4) an intermediary entity,
- 5) the taxpayer referred to in Article 13(3),
- 6) <sup>223</sup> a tobacco intermediary entity, except for the foreign entrepreneur referred to in Article 20d(1)(c),
- 7) <sup>224</sup> an entity representing the foreign entrepreneur referred to in Article 20d(1)(c)
  - <sup>225</sup> shall provide the guarantee in the form of a general guarantee to guarantee the coverage of many tax liabilities, or many tax liabilities and many petrol fees.

1a. The general guarantee may also be provided upon written request of:

- 1) <sup>226</sup> the taxpayer referred to in Article 78(1) or the tax representative, to guarantee the coverage of their tax liabilities and petrol fees to the payment of which those entities may be obliged;
- 2) <sup>227</sup> the carrier or forwarder, to guarantee the coverage of the tax liabilities which may arise with regard to the excise goods moved thereby under the excise duty suspension arrangement and belonging to entities obliged to provide excise guarantee, and the petrol fees to the payment of which those entities may be obliged.

2. <sup>228</sup> The competent director of customs office shall determine the amount of the general guarantee, taking into account paragraph (3), (3a) or (3b), which is equal to:

- 1) <sup>229</sup> the amount of the tax liabilities, or the tax liabilities and the petrol fees, when their amount may be calculated precisely upon the acceptance of the guarantee;

- 2) <sup>230</sup> the estimate maximum amount arising out of the tax liabilities which may arise and the petrol fees the payment obligation of which may arise.
3. <sup>231</sup> The amount of the general guarantee provided by the intermediary entity shall be determined at the amount equal to the maximum amount of the monthly tax liability which may arise in case of using the excise goods not in conformity to their intended use entitling to the excise exemption, or violation of the conditions of that exemption, and the maximum amount of the petrol fee the payment obligation of which may arise with regard to those goods.
- 3a. <sup>232</sup> The amount of the general guarantee provided by the entity referred to in paragraph (1a) shall be determined at the amount stated by that person in the request for providing general guarantee, estimated by that entity at a value allowing for the coverage, at any time, of the tax liabilities and the petrol fees which are to be covered with that guarantee.
- 3b. <sup>233</sup> The amount of the general guarantee provided by the tobacco intermediary entity and the entity representing the foreign entrepreneur referred to in Article 20d(1)(c) shall be determined at the amount equal to the maximum amount of the monthly tax liability which may arise in the case of sale of raw tobacco to an entity other than a tax warehouse keeper which consumes the raw tobacco for production of manufactured tobacco, or a tobacco intermediary entity, or in the case of consuming the raw tobacco by the tobacco intermediary entity, at no less however than PLN 2 million.
4. <sup>234</sup> For the determination of the amount of excise guarantee the rates of excise duty and of the petrol fee shall be applied which are fixed as of the day when the tax liability arises, and if that day may not be determined – on the day when the guarantee is provided; if however the excise duty rates or the petrol fee rates change during the course of the excise duty suspension arrangement, the competent director of customs office shall adjust the amount of the excise guarantee and notify thereof the entity which provided the guarantee.
5. <sup>235</sup> If the general guarantee is accepted to guarantee the coverage of the tax liabilities, or the tax liabilities and the petrol fees, the amount of which may change over time, the entities referred to in paragraph (1) or (1a) shall be obliged to estimate provisionally the amount of such a guarantee at a value allowing for covering, at any time, those tax liabilities and petrol fees.
6. <sup>236</sup> The intermediary entity, the intermediary tobacco entity, and the entity representing the foreign entrepreneur referred to in Article 20d(1)(c) shall be obliged to adjust the amount of the general guarantee so as to provide for the coverage of their tax liabilities which may arise at any time, and in the case of the intermediary entity – also of the petrol fees to the payment of which it may be obliged.
7. <sup>237</sup> Performance of an activity or occurrence of a fact which results in the arising of the tax liability, and in the case of an intermediary tobacco entity and the entity representing the foreign entrepreneur referred to in Article 20d(1)(c), the acquisition of raw tobacco by that intermediary tobacco entity or that entity representing that foreign entrepreneur respectively, shall require that it is recorded that the general guarantee is charged with the amount of the tax liability which arose or may arise, or with the amount of the tax liability which arose or

may arise and of the petrol fee the payment obligation of which arose or may arise respectively, following the prior determination of the utilization of the general guarantee, with prejudice to Article 63(1a).

7a. <sup>238</sup> With prejudice to Article 41a(6), the charge of the general guarantee with the amount of the tax liability which arose or may arise, or with the amount of the tax liability and the petrol fee the payment obligation of which arose or may arise, and its release from the charge in the cases referred to in:

- 1) paragraph (1)(1)-(3) and (5) and in paragraph (1a) – shall be recorded by the competent director of customs office;
- 2) paragraph (1)(4) – shall be recorded by the intermediary entity;
- 3) <sup>239</sup> paragraph (1)(6) – shall be recorded by the intermediary tobacco entity;
- 4) <sup>240</sup> paragraph (1)(7) – shall be recorded by the entity representing the foreign entrepreneur referred to in Article 20d(1)(c).

7b. <sup>241</sup> The charge of the general guarantee with the amount of the tax liability which arose or may arise, or with the amount of the tax liability and the petrol fee the payment obligation of which arose or may arise, and its release from the charge, in the cases when that charge or release is not recorded with the use of the System, may be recorded by the entity specified in paragraphs (1)(1)-(3) and (5), provided that the manner in which the charge of the general guarantee and the release thereof from that charge is recorded provides for the possibility to determine, at any time, the utilised amount of that guarantee, and was agreed upon in writing with the competent director of customs office.

8. <sup>242</sup> Upon request of the entity referred to in paragraph (1) which meets the conditions specified in Article 64(1)(1), (3) and (4), the competent director of customs office shall consent to the provision of a lump-sum guarantee, to guarantee the performance of the tax liabilities of that entity, or the performance of its tax liabilities and the obligation to pay the petrol fee by that entity. The provisions of Article 64(3)-(5a), (8) and (9), and the provisions issued under Article 64(10) concerning the manner to document that the conditions specified in Article 64(1) are met, including the type of documents confirming that they are met, shall apply accordingly.

9. <sup>243</sup> The competent director of customs office shall determine the amount of the lump-sum guarantee at 30% of the general guarantee to the provision of which the entity submitting the request for lump-sum guarantee is obliged, with prejudice to paragraph (9a) and (9b).

9a. <sup>244</sup> Upon request of the intermediary tobacco entity or the entity representing the foreign entrepreneur referred to in Article 20d(1)(c) which meets the conditions referred to in Article 64(1)(1), (3) and (4), as the case may be, the competent director of customs office shall determine the amount of the lump-sum guarantee, with prejudice to paragraph (9b), at 30% of the general guarantee to the provision of which those entities are obliged, no more however than PLN 30 million.

9b. <sup>245</sup> Upon request of the intermediary tobacco entity which holds proper infrastructure to store raw tobacco, which entered with raw tobacco producers into contracts for the supply of

at least 100 tons of raw tobacco during a year, which meets the conditions referred to in Article 64(1)(1), (3) and (4), as the case may be, and which did not violate the provisions of the tax law during the year before the day of submitting the request, the competent director of customs office shall determine the amount of the lump-sum guarantee, taking into account the quantity of the raw tobacco acquired within the territory of the country, acquired under intra-Community acquisition, or imported by that entity during the year before determining that amount, at the level of PLN 1 million per each full thousand tons of raw tobacco, no less however than PLN 1 million.

10. <sup>246</sup> The competent director of customs office shall determine again, at least once a year, the amount of the lump-sum guarantee, in particular in case of changes in the maximum amounts of the tax liabilities or the petrol fees subject to excise guarantee, changes in the quantity of the raw tobacco acquired within the territory of the country, acquired within intra-Community acquisition, or imported during the year by the intermediary tobacco entity referred to in paragraph (9b), or upon request of the entity providing the lump-sum guarantee.

#### **Article 66 [Delegation of Legislative Powers]**

1. The minister competent for public finance shall determine with a regulation:

- 1) the template of the request for the consent to provide lump-sum guarantee, and the request for the prolongation of the consent to provide lump-sum guarantee,
- 2) the detailed manner of determining the amount of the general guarantee and the lump-sum guarantee,
- 3) the detailed manner of application of the general guarantee and the lump-sum guarantee, including:
  - a) <sup>247</sup> the manner to determine the utilised amount of the general guarantee and to record its charge and release from charge with the amount of the tax liability which arose or may arise, and the petrol fee the payment obligation of which arose or may arise,
  - b) the manner of application of the general guarantee and the lump-sum guarantee with the use of the System,
- 4) the detailed manner to cover the excise goods exempt from excise duty due to their intended use with the excise guarantee referred to in Article 32(5)(1),
- 5) the manner and frequency of adjusting the general guarantee referred to in Article 65(6)

- <sup>248</sup> taking into account the need to secure properly the excise duties and the petrol fee.

2. <sup>249</sup> The minister competent for public finance may determine with a regulation:

- 1) the cases, other than those specified in Article 63(4), in which the tax liabilities of the entities referred to in Article 63(1) and the petrol fees to the payment of which those

entities are or may be obliged, may be, upon their request, covered with excise guarantee of a third party, upon the consent of that party,

2) the cases, other than those specified in Article 65(8), in which lump-sum guarantee may be provided,

3) the cases in which an amount of excise guarantee lower than that specified herein applies to some excise goods, and to specify that amount,

4) the detailed conditions of recording by the entity referred to in Article 65(7b) the charge of the general guarantee with the amount of the tax liability which arose or may arise, or the amount of the tax liability and the petrol fee, as well as of releasing that guarantee from that charge,

5) the detailed manner of recording by the entity referred to in Article 65(7b) the charge of the general guarantee with the amount of the tax liability which arose or may arise, or the amount of the tax liability and the petrol fee, as well as of releasing that guarantee from that charge,

6) the cases in which the charge of the general guarantee with the amount of the tax liability which arose or may arise, or the tax liability which arose or may arise and the petrol fee the payment obligation of which arose or may arise, is not recorded

- taking into account the need to properly secure the excise duties and the petrol fee, provide for efficient application of excise securities, and simplify the turnover of excise goods.

#### **Article 67 [Forms of Excise Guarantee]**

1. Excise guarantee may be provided in the form of:

1) a cash deposit;

2) a bank or insurance guarantee;

3) a check certified by a legal person having their seat within the territory of the European Union or the territory of a Member State of the European Free Trade Association (EFTA) – a party to the Agreement on the European Economic Area, or by a branch of a foreign bank, which conduct within the territory of the country banking activity within the meaning of the provisions of the Act of 29<sup>th</sup> August 1997 – the Banking Law (Journal of Laws of 2012, item 1376, as amended);

4) a promissory note;

5) other non-cash payment instruments.

2. Excise guarantee shall be binding within the entire territory of the European Union.

3. The minister competent for public finance shall determine with a regulation:

1) the manner and place of providing excise guarantee,

- 2) the types of other non-cash payment instruments which may be accepted as excise guarantee,
  - 3) the manner of confirming the acceptance of excise guarantee,
  - 4) the templates of forms used for confirming the acceptance of excise guarantee
- <sup>250</sup> taking into account the need to secure properly the performance of the tax liabilities concerning excise duty and the obligation to pay the petrol fee.

#### **Article 68 [Cash Deposit as Excise Guarantee]**

A cash deposit shall be provided in the Polish currency, unless otherwise set out by a special provision.

#### **Article 69 [Guarantee Submitted as Excise Guarantee]**

1. <sup>251</sup> The guarantor should oblige themselves in writing to pay, jointly and severally with the taxpayer, their successors, and the person to whom they issued the bank or insurance guarantee provided by that person as the excise guarantee instead of the entity obliged to provide excise guarantee or with that entity, unconditionally and irrevocably, upon each demand of the competent director of customs office, the secured amount of the tax liability, the secured amount of the petrol fee, or both those amounts, including default interest, if they become due and payable.
2. <sup>252</sup> The guarantor shall be liable jointly and severally with the taxpayer, their successors, and the person to whom they issued the bank or insurance guarantee provided by that person as the excise guarantee instead of the entity obliged to provide excise guarantee or with that entity, with their entire property for the tax liability covered with the guarantee until it expires, and for the petrol fee covered with the guarantee until the obligation to pay that fee expires, including default interest – up to the amount of the guarantee.
3. <sup>253</sup> The guarantor may be exclusively a legal person having their seat within the territory of the European Union or the territory of a Member State of the European Free Trade Association (EFTA) – a party to the Agreement on the European Economic Area, or a branch of a foreign bank or main branch of an insurance company, which conduct within the territory of the country banking activity within the meaning of the provisions of the Act of 29<sup>th</sup> August 1997 – the Banking Law or the Act of 11<sup>th</sup> September 2015 on Insurance and Reinsurance Activity (Journal of Laws, item 1844) respectively, and:
  - 1) hold, based on those provisions, entitlement to issue bank or insurance guarantees within the entire territory of the country;
  - 2) notify, in writing, the minister competent for public finance on the intention to issue bank or insurance guarantees provided as excise guarantee.
4. The minister competent for public finance, upon agreement with the Chairman of the Polish Financial Supervision Authority, shall announce with a notice the list of guarantors referred to in paragraph (3).

5. The minister competent for public finance may determine with a regulation the templates of the content of bank and insurance guarantees provided as excise guarantee, taking into account the need to provide for the proper performance of the obligation referred to in paragraph (1) by the guarantor.

#### **Article 70 [Choice of Excise Guarantee Form]**

1. The entities obliged to provide excise guarantee may choose the form of the guarantee from among the forms set out in Article 67(1).
2. The excise guarantee may be provided in several forms set out in Article 67(1), provided that they will jointly cover the entire required amount of the excise guarantee.

#### **Article 71 [Refusal to Accept Excise Guarantee]**

<sup>254</sup>

1. The competent director of customs office shall refuse to accept the excise guarantee, if they find that it does not provide for the cover, at the amount due, of the amount of the tax liability, or the amount of the tax liability and the amount of the petrol fee.
2. The competent director of customs office shall refuse to accept the excise guarantee with a specific expiry date, if it does not provide efficiently for the cover, on time, of the amount of the tax liability, or the amount of the tax liability and the amount of the petrol fee.

#### **Article 72 [Prolongation of Guarantee, Provision of Additional or New Excise Guarantee]**

1. <sup>255</sup> If the competent director of customs office finds that the excise guarantee provided does not provide for the cover, at the amount due or on time, of the amount of the tax liability, or the amount of the tax liability and the amount of the petrol fee, they shall be obliged to require the prolongation of the guarantee, the provision of an additional or a new excise guarantee.
2. The entity which provided the excise guarantee for a definite period of time shall be obliged to document no later than one month prior to the expiry of that period the prolongation of the expiry date of the guarantee, or to provide a new excise guarantee.

#### **Article 73 [Coverage of Excise Duty from Excise Guarantee Submitted]**

1. <sup>256</sup> If the determined or declared amount of excise duty or of the petrol fee are not paid within due time, the tax authority shall cover them from the excise guarantee provided.
  - 1a. <sup>257</sup> The tax authority shall not cover the excise duty amount referred to in paragraph (1) from the excise guarantee of the entity referred to in Article 63(3), in the case referred to in Article 42(1)(4), if that entity was not informed or could have not been informed on the non-receipt by the dispatching entity of the report of receipt or the fallback report of receipt, or the



report of export or the fallback report of export, or the alternative proof of completion of the excise duty suspension arrangement, and within one month of the provision of the information to them by the tax authority provides evidence that the movement of excise goods under the excise duty suspension arrangement was completed pursuant to Article 41a(2), or evidence confirming the place of occurrence of irregularities within the territory of a Member State.

1b. <sup>258</sup> If the amount of the excise guarantee does not cover entirely the amount of the excise duty and the petrol fee, including interest:

1) from the part of the excise guarantee the amount of which is determined to cover the excise duty – first the amount of excise duty with interest shall be covered;

2) from the part of the excise guarantee the amount of which is determined to cover the petrol fee – first the amount of petrol fee with interest shall be covered.

2. <sup>259</sup> If for the coverage of the excise duty amount or the petrol fee amount not paid within due time, it is required to sell, within the meaning of the provisions of the Act of 23<sup>rd</sup> April 1964 – the Civil Code (Journal of Laws of 2014, item 121 and 827), the rights arising out of the non-cash payment instruments provided as excise guarantee, to that sale the provisions of the Act of 17<sup>th</sup> June 1966 on Administrative Enforcement Proceedings (Journal of Laws of 2012, item 1015, as amended) shall apply.

3. <sup>260</sup> In the case referred to in paragraph (1), the due default interest on the tax arrears shall be charged until the day of coverage of the excise duty amount or the petrol fee amount.

#### **Article 74 [Conditions and Mode of Excise Guarantee Return]**

1. <sup>261</sup> The excise guarantee may not be returned until the tax liabilities and the obligation to pay the petrol fee expires or until they may no longer arise.

2. (repealed).

3. <sup>262</sup> If the tax liability or the obligation to pay the petrol fee expires in part or may no longer arise up to a part of the amount secured, the provided guarantee shall be immediately partially returned to the entity which provided the guarantee, upon its request.

4. <sup>263</sup> If the tax liability or the obligation to pay the petrol fee expires or may no longer arise, the excise guarantee shall be returned upon request of the entity which provided the guarantee within 7 days.

5. <sup>264</sup> The minister competent for public finance shall determine with a regulation the detailed conditions and procedure of return of the excise guarantee, taking into account the need to secure the performance of the excise tax liabilities and the obligation to pay the petrol fee.

#### **Article 75 [Interest on Excise Guarantee]**

No interest is paid on the amount of the excise guarantee returned.

## **Article 76 [Delegation of Legislative Powers to Determine Template of Documents Confirming Provision of Guarantee or Payment of Excise Duty]**

The minister competent for public finance shall determine with a regulation the template of the document confirming the provision of the excise guarantee or the payment of the excise duty within the territory of the country referred to in Article 78(1)(2), taking into account the need to provide information on excise guarantee provided or the amount of excise duty paid.

## **Chapter 7**

### **Excise Goods Outside Excise Duty Suspension Arrangement <sup>265</sup>**

## **Article 77 [Simplified Accompanying Document. Commercial Document]**

1. <sup>266</sup> Intra-Community supply or acquisition of the excise goods specified in Annex No. 2 hereto which are outside the excise duty suspension arrangement, made for the needs of economic activity conducted within the territory of the country, shall be made based on a simplified accompanying document.

2. The simplified accompanying document may be replaced with the commercial document, if that document contains the same data as required for the simplified accompanying document. To the commercial document replacing the simplified accompanying document the provisions on the simplified accompanying document shall apply accordingly.

3. The minister competent for public finance may determine with a regulation the template and the circulation manner of copies of the simplified accompanying document, as well as the conditions under which the commercial document may replace the simplified accompanying document, taking into account the need to provide for information on the quantity of excise goods acquired and the excise duty amounts payable.

## **Article 78 [Obligations Connected with Intra-Community Acquisition of Excise Goods. Notification of Planned Intra-Community Acquisition. Simplified Return]**

1. <sup>267</sup> If a taxpayer makes intra-Community acquisition of the excise goods specified in Annex No. 2 hereto which are outside the excise duty suspension arrangement, for the needs of economic activity conducted within the territory of the country, they shall be obliged:

- 1) <sup>268</sup> before the entry of the excise goods to the territory of the country, to notify the competent director of customs office of the planned intra-Community acquisition;
- 2) <sup>269</sup> to confirm the receipt of the excise goods on the simplified accompanying document – except for the cases in which, despite the obligation arising out of the Commission Regulation (EEC) No. 3649/92 of 17<sup>th</sup> December 1992 on a simplified accompanying document for the intra-Community movement of products subject to excise duty which have been released for consumption in the Member State of dispatch (OJ L 369, 18.12.1992, p. 17; OJ Polish special edition, Chapter 9, v. 1, p. 216), those goods were

not moved from the territory of a Member State under the simplified accompanying document, and in the case when the acquired goods are taxed within the territory of the country with excise duty rate other than zero rate, to issue and append the document confirming the provision of excise guarantee or payment of excise duty within the territory of the country to the returned simplified accompanying document;

3) <sup>270</sup> without request of the tax authority, to submit to the competent director of customs office a simplified tax return, according to the template specified, and calculate and make a payment of excise duty within the territory of the country to the bank account of the competent customs chamber, within 10 days of the day on which the tax obligation arose, if the acquired goods are taxed within the territory of the country with excise duty rate other than zero rate;

3a) <sup>271</sup> to provide excise guarantee, if the acquired goods are taxed within the territory of the country with excise duty rate other than zero rate;

4) <sup>272</sup> (repealed).

2. The taxpayer referred to in paragraph (1), before appending the document confirming the provision of excise guarantee or payment of excise duty within the territory of the country referred to in paragraph (1)(2) to the returned simplified accompanying document, shall be obliged to obtain on that document confirmation of the competent director of customs office that the excise guarantee is provided or that excise duty is paid.

3. <sup>273</sup> The provisions of paragraphs (1)(1), (3) and (3a) shall apply accordingly to the cases of intra-Community acquisition of excise goods not specified in Annex No. 2 hereto which within the territory of the country are taxed with excise duty rate other than zero rate.

4. <sup>274</sup> The provisions of paragraphs (1)(1), (3) and (3a) shall apply accordingly in the case of intra-Community acquisition of excise goods intended for commercial purposes within the meaning of Article 34 by a natural person.

4a. <sup>275</sup> To the tax return referred to in paragraph (1)(3) the provision of Article 24c shall apply accordingly.

5. <sup>276</sup> (repealed).

6. <sup>277</sup> (repealed).

7. <sup>278</sup> (repealed).

8. The minister competent for public finance shall determine with a regulation the template of the notification of planned intra-Community acquisition referred to in paragraph (1)(1), taking into account the need to provide for information on the quantity of excise goods acquired and the excise duty amount payable.

9. <sup>279</sup> (repealed).

10. The minister competent for public finance shall determine with a regulation the template of the simplified tax return referred to in paragraph (1)(3) with explanations as to the manner of proper submission of that tax return, information on the time limit and place to submit the

tax return, and instruction for the taxpayer that the tax return constitutes the basis to issue an enforcement title, taking into account the need to provide for the possibility to calculate properly the amount of excise duty.

#### **Article 79 [Tax Representative of Natural Person]**

1. <sup>280</sup> If a natural person intends to make intra-Community acquisition, not for the purposes of economic activity, of the excise goods specified in Annex No. 2 hereto which are outside the excise duty suspension arrangement, including goods taxed with zero rate excise duty, and those goods are to be supplied to that person within the territory of the country, such acquisition may be made exclusively through a tax representative. In such a situation it shall be assumed that the intra-Community acquisition is not made by that natural person but by the tax representative.
2. The tax representative within the territory of the country shall be appointed by the seller.

#### **Article 80 [Obligations of Tax Representative]**

1. A tax representative may be exclusively an entity which meets jointly the conditions set out in Article 48(1)(2)-(6) for which the competent director of customs office issued an authorisation for performing activities as tax representative.
2. The tax representative shall be obliged to:
  - 1) calculate excise duty and pay the excise duty payable;
  - 2) submit tax returns to the competent director of customs office;
  - 3) <sup>281</sup> (repealed).
- 2a. <sup>282</sup> To the tax returns referred to in paragraph (2)(2) the provision of Article 24c shall apply accordingly.
3. <sup>283</sup> (repealed).
4. <sup>284</sup> (repealed).
5. <sup>285</sup> (repealed).
6. <sup>286</sup> (repealed).

#### **Article 81 [Procedure of Granting Authorisation for Performing Activities as Tax Representative]**

1. An authorisation for performing activities as tax representative shall be issued for a definite period of time, no longer than 3 years, or for an indefinite period of time, by the competent director of customs office upon request of the seller.
2. The request referred to in paragraph (1) should include the data of the seller and the economic activity conducted thereby, in particular the given name and surname or the business name of the seller, the address of their seat or place of residence, the type of the

economic activity, the identification data of the tax representative, in particular the given name and surname or the business name of the tax representative, the address of their seat or place of residence, the number in the National Court Register or the register of economic activity, the statistical identification number (REGON), the tax identification number (NIP), the e-mail address, and the nature of excise goods to be acquired within intra-Community acquisition.

3. The seller shall be obliged to append the request referred to in paragraph (1) with the declaration on the consent of the tax representative to perform activities as such, and with documents confirming that the conditions referred to in Article 48(1)(2)-(6) are met by the tax representative.

4. The authorisation for performing activities as tax representative shall specify in particular:

- 1) the address of the seat or place of residence of the tax representative;
- 2) the given name and surname or business name and the address of the seat or place of residence of the seller;
- 3) the nature of the excise goods to be acquired within intra-Community acquisition.

5. <sup>287</sup> The tax representative shall be obliged to notify the competent director of customs office of any change of the data included in the request referred to in paragraph (1), within 7 days of the day on which the change occurred, with prejudice to paragraphs (6) and (8).

6. <sup>288</sup> The notification on a planned change of the data included in the authorisation for performing activities as tax representative shall be made before that change is made, with prejudice to paragraph (8).

7. <sup>289</sup> The notification referred to in paragraph (6) shall constitute also a request for changing the authorisation with regard to the change notified. To the change of authorisation for performing activities as tax representative the provision of Article 48(7) shall apply accordingly.

8. A change of the tax representative or the seller specified in the authorisation for performing activities as tax representative shall require a new authorisation, except for successors or transformed entities in the case of their entry into the rights or obligations provided for by the provisions of the tax law and set out in the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

9. <sup>290</sup> (repealed).

10. <sup>291</sup> To:

- 1) the refusal to issue the authorisation for performing activities as tax representative the provision of Article 52(1)(1) and (2) shall apply accordingly;
- 2) the withdrawal or expiry of the authorisation for performing activities as tax representative the provision of Article 52(2)-(5) shall apply accordingly.

## **Article 82 [Excise Duty Refund Procedure]**

1. In the case of intra-Community supply of excise goods on which excise duty was paid within the territory of the country, the following entities shall be entitled to the excise duty refund:

- 1) the taxpayer who made the intra-Community supply of those excise goods, or
  - 2) the entity which acquired those excise goods from the taxpayer and made the intra-Community supply thereof
- upon written request submitted to the competent director of customs office with documents confirming the payment of the excise duty within the territory of the country.

2. In the case of export of excise goods on which excise duty was paid within the territory of the country, the following entities shall be entitled to the excise duty refund:

- 1) the taxpayer who made the export of those excise goods, or
  - 2) the entity which acquired those excise goods from the taxpayer and made the export thereof
- upon written request submitted to the competent director of customs office within a year of the export date with the documents referred to in paragraph (4).

2a. <sup>292</sup> If, with regard to the excise goods referred to in Annex No. 2 hereto moved through the territory of the European Union which are outside the excise duty suspension arrangement:

- 1) an irregularity occurred within the territory of the country:
  - 2) the place where the irregularity occurred may not be determined, and that occurrence of the irregularity is detected within the territory of the country
- the competent director of customs office shall collect excise duty calculated with application of excise duty rates fixed as of the day on which the irregularity occurred, or if that day may not be determined – fixed as of the day on which the irregularity was detected.

2b. The competent director of customs office referred to in paragraph (2a) shall be obliged to notify the competent tax authorities of the Member State from the territory of which the dispatch was made of the occurrence or detecting of the irregularity and of the collection of excise duty within the territory of the country.

2c. If, as a result of detecting the occurrence of the irregularity, excise duty is collected within the territory of a Member State, and before the expiry of 3 years from the date on which the excise goods were acquired by the recipient it is ascertained that the irregularity occurred within the territory of the country, the competent director of customs office shall collect excise duty calculated with application of excise duty rates fixed as of the day on which the irregularity occurred.

2d. Due to the detecting of the irregularity the competent director of customs office referred to in paragraph (2c) shall be obliged to notify the competent tax authorities of the Member State in which the excise duty was collected of the occurrence of the irregularity and of the collection of excise duty within the territory of the country.

2e. If, as a result of detecting of the occurrence of the irregularity, excise duty is collected within the territory of the country, and before the expiry of 3 years from the date on which the excise goods were acquired by the recipient it is ascertained that the irregularity occurred within the territory of a Member State and the excise duty is collected there, the entity which paid the excise duty due to the detection of the irregularity within the territory of the country shall be entitled to the refund of the excise duty.

2f. In the case referred to in paragraph (2e), the excise duty shall be refunded upon written request of the entity submitted to the competent director of customs office within 5 years, counting from the end of the calendar year in which the excise duty payment date expired.

2g. <sup>293</sup> An irregularity shall be deemed to be situations occurring during the movement of the excise goods specified in Annex No. 2 hereto which are outside the excise duty suspension arrangement as a result of which the entire movement or a part of the movement of those goods is not completed in conformity with the provisions, except for situations in which the excise goods are totally destroyed or irrevocably lost.

3. The taxpayer or the entity referred to in paragraph (1) submitting the request for excise duty refund shall be obliged, following the intra-Community supply, to submit the following to the competent director of customs office:

- 1) the accompanying documents for the movement of the excise goods;
- 2) <sup>294</sup> the confirmation of receipt of the excise goods by the recipient from a Member State on the simplified accompanying document or on the copy of the commercial document referred to in Article 77(2) in the case of the excise goods referred to in Annex. No. 2 hereto;
- 2a) <sup>295</sup> the confirmation of receipt of the excise goods by the recipient from a Member State on the commercial document in the case of excise goods not referred to in Annex. No. 2 hereto which within the territory of the country are taxed with excise duty rate other than zero rate;
- 3) the document confirming the payment of excise duty or submission of tax return in the Member State or the provision of guarantee, or the document confirming that the excise duty in that Member State is not required.

4. The taxpayer or the entity referred to in paragraph (2) submitting the request for excise duty refund shall be obliged to submit the following to the competent director of customs office:

- 1) the documents confirming the payment of excise duty within the territory of the country;
- 2) documented confirmation of export of the excise goods from the territory of the country outside the customs area of the European Union within the meaning of the

Council Regulation (EEC) No. 2913/92 of 12<sup>th</sup> October 1992 establishing the Community Customs Code, in the manner compliant with the provisions of the customs law.

4a. The entity referred to in paragraph (2e) submitting the request for excise duty refund shall be obliged to submit the following to the competent director of customs office:

- 1) the accompanying documents for the movement of the excise goods;
- 2) the document confirming the payment of excise duty within the territory of the Member State in which the irregularity occurred;
- 3) the document confirming the payment of excise duty due to the detection of irregularity within the territory of the country.

5. Excise duty shall not be refunded in the case of intra-Community supply and export of excise goods marked with excise stamps, nor shall be the amount of excise duty lower than the minimum refund amount.

6. The competent director of customs office shall verify the request for excise duty refund based on the documents referred to in paragraph (1) and (3)-(4a).

6a. In case of failure to refund excise duty by the competent director of customs office as specified in paragraphs (1), (2) and (2e) within the time limits specified in the provisions issued under paragraph (7), the refund shall be treated as an interest-bearing tax overpayment within the meaning of the provisions of the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

7. The minister competent for public finance shall determine with a regulation the procedure and time limits for the excise duty refund referred to in paragraphs (1), (2) and (2e), the minimum refund amount, and the template of the request for excise duty refund, taking into account:

- 1) the need to provide for information on the quantity of excise goods supplied within intra-Community acquisition or exported;
- 2) the need of the proper determination of the amounts of the excise duty refunded;
- 3) the economic viability of the excise duty refund.

#### **Article 83 [Reduction of Excise Duty Amount by Tax Warehouse Keeper due to Complaint about Excise Goods]**

1. In case of complaint about excise goods with excise duty paid accepted by the tax warehouse keeper, the tax warehouse keeper may reduce the excise duty amount to the payment of which they are obliged by the amount of the excise duty paid on the goods complained about.

2. The tax warehouse keeper may make the reduction as specified in paragraph (1), if the excise goods complained about are used to production of excise goods.

#### **Article 83a. [Reduction of Excise Duty Amount by Taxpayer due to Complaint about Excise Goods]**



1. In case of complaint about excise goods with excise duty paid accepted by the taxpayer, the taxpayer may reduce the excise duty amount to the payment of which they are obliged by the amount of the excise duty paid on the goods complained about.

2. The taxpayer may make the reduction as specified in paragraph (1), if the excise goods complained about are totally destructed:

1) in the tax warehouse, or

2) upon the consent of the competent director of customs office – in other place meeting the conditions of destruction of goods under separate provisions, in the presence of a representative of the tax authority.

2a. <sup>296</sup> In the case referred to in paragraph (2)(2), the competent director of customs office, following the receipt of the notification by the taxpayer of the intention to destroy excise goods, may grant consent for the destruction of excise goods referred to in Article 94(1) and Article 95(1) without the presence of a representative of the tax authority.

3. From the procedure of destruction of excise goods referred to in paragraph (2)(2) an excise goods destruction report shall be drafted in two copies, in which the reasons for the destruction shall be stated. The excise goods destruction report shall be signed by the taxpayer and the representative of the tax authority present during the procedure of destruction.

4. <sup>297</sup> In the case of granting consent for destruction of excise goods without the presence of a representative of the tax authority, the taxpayer, within 3 working days, shall submit a declaration confirming the destruction of the excise goods to the competent director of customs office.

5. <sup>298</sup> The declaration referred to in paragraph (4) should include in particular:

1) the date of destruction of the excise goods;

2) the quantity of the excise goods destructed;

3) a legible signature of the submitter.

## **Chapter 8**

### **Authorisations**

#### **Article 84 [Authorisation for Conducting Economic Activity Involving Excise Tax]**

1. The issue, refusal to issue, change, and withdrawal of an authorisation:

1) for operating a tax warehouse;

2) for acquisition of excise goods as registered consignee,

3) for a single acquisition of excise goods as registered consignee,

3) (repealed),

- 3a) for dispatch of excise goods as registered consignor,
- 4) for performing activities as tax representative,
- 5) for conducting economic activity as intermediary entity,
- 6) for exit

- shall be made with a decision.

1a. To proceedings concerning the authorisations referred to in paragraph (1) to which the provisions of Chapter 4 of the Act of 27<sup>th</sup> August 2009 on Customs Service (Journal of Laws of 2013, item 1404) with regard to audit proceedings apply the provision of Article 6 shall not apply.

2. The minister competent for public finance shall determine with a regulation:

- 1) <sup>299</sup> the detailed manner of issue, change, and withdrawal of the authorisations referred to in paragraph (1);
- 2) the templates of requests for issue of the authorisations referred to in paragraph (1), and the manner of documenting that the conditions on which the issue of the given authorisation depends are met.

3. The minister competent for public finance, while issuing the regulation referred to in paragraph (2), shall take into account:

- 1) the need to acquire sufficient information on the taxpayer, in particular such affecting the determination of the excise guarantee, and the need for the proper operation of the entity;
- 2) the need to provide for the free movement of excise goods.

## **Chapter 9**

### **Levels of Acceptable Losses of Excise Goods and Acceptable Levels of Consumption of Excise Goods**

#### **Article 85 [Losses and Consumption of Excise Goods]**

1. The competent director of customs office, with prejudice to paragraph (7), shall determine with a decision the following for the particular entities upon their request:

- 1) the levels of acceptable losses of excise goods;
- 2) the acceptable levels of consumption of alcoholic beverages:
  - a) which are under the excise duty suspension arrangement, in the case of consuming them for production of other goods,

b) referred to in Article 32(4)(2) and (3), in the case of consuming them by a consuming entity.

2. The competent director of customs office, with prejudice to paragraph (7), with a decision issued ex officio for the particular entities:

1) may determine:

- a) the levels of acceptable losses of excise goods,
- b) the acceptable levels of consumption of excise goods

- referred to in paragraph (1);

2) shall determine the acceptable levels of consumption of the excise goods specified in Annex No. 2 hereto referred to in Article 89(2) which are outside the excise duty suspension arrangement and taxed with zero rate excise duty, in the case of their consumption for production of other goods;

3) <sup>300</sup> shall determine the acceptable levels of consumption of the alcoholic beverages referred to in Article 32(4)(2) and (3), in the case of consuming them by a consuming entity.

3. If a taxpayer has been granted more than one authorisation for operating a tax warehouse, the levels of acceptable losses of excise goods or the acceptable levels of consumption of excise goods referred to in paragraphs (1) and (2) shall be determined separately for each tax warehouse.

4. The competent director of customs office, while determining the levels of acceptable losses of excise goods and the acceptable levels of their consumption, shall take into account:

- 1) the nature of the excise goods;
- 2) the nature of the particular production stages and other activities during which losses of excise goods may arise;
- 3) the technical and technological conditions occurring in the given case;
- 4) the maximum levels of acceptable losses of excise goods specified in the regulation issued under paragraph (5).

5. The minister competent for public finance shall determine with a regulation:

- 1) the maximum levels of acceptable losses of some excise goods arising during the performance of some activities during which losses of excise goods may arise;
- 2) the detailed scope and manner to determine the levels of acceptable losses of excise goods or acceptable levels of consumption of excise goods;
- 3) the manner to account for the losses of excise goods, in particular in the cases of the beginning of activities during which losses of excise goods may arise, or change of technical and technological conditions while performing those activities, until the determination in those cases of the levels of acceptable losses of excise goods by the competent director of customs office.

6. The minister competent for public finance, while issuing the regulation referred to in paragraph (5), shall take into account:

- 1) the nature of the excise goods;
- 2) the nature of the particular production stages and other activities during which losses of excise goods may arise;
- 3) the technical and technological conditions occurring in the given case.

7. The minister competent for public finance may determine with a regulation the levels of acceptable losses of some or all excise goods, taking into account the nature of the excise goods, the nature of the particular production stages and other activities during which losses of excise goods may arise, the technical and technological conditions, including the means of transport, occurring in the given case.

8. Upon the entry into force of the provisions issued under paragraph (7), the decisions issued under paragraph (1)(1) and paragraph (2)(1)(a) shall expire in the part concerning the levels of acceptable losses which are determined in the said provisions.

9. If the decisions issued under paragraph (1)(1) and paragraph (2)(1)(a) determine the levels of acceptable losses of excise goods more favourable for the entity than those specified in the provisions issued under paragraph (7), those decisions shall remain in force until the end of the period for which they were issued, and in the case of decisions issued for an indefinite period of time – until the end of the calendar year following the calendar year in which the provisions issued under paragraph (7) entered into force.

## **SECTION IV**

### **Excise Goods – Specific Provisions. Tax Base and Excise Duty Rates**

#### **Chapter 1**

#### **Energy Products and Electricity**

##### **Article 86 [Definition of Energy Products]**

1. Energy products within the meaning hereof shall cover the following products:

- 1) products falling within CN codes from 1507 to 1518 00, if they are intended for use as heating fuels or as motor fuels;
- 2) products falling within CN codes 2701, 2702, and from 2704 to 2715;
- 3) products falling within CN codes 2901 and 2902;
- 4) products falling within CN code 2905 11 00, which are not synthetic, if they are intended as heating fuels or as motor fuels;

- 5) products falling within CN codes 3403;
- 6) products falling within CN codes 3811;
- 7) products falling within CN codes 3817;
- 8) those designated as falling within CN codes 3824 90 91 and 3824 90 97, if they are intended as heating fuels or as motor fuels;
- 9) other products, excluding substances used for the marking and dyeing referred to in Article 90(1), intended for use, intended for sale, or used as motor fuels or as additives or admixtures to motor fuels – regardless of their CN code;
- 10) other products constituting hydrocarbons, except for peat, intended for use, intended for sale, or used as heating fuels or as additives or admixtures to heating fuels – regardless of their CN code.

2. Motor fuels within the meaning hereof shall cover energy products intended for use, intended for sale, or used for stationary motors.

3. Heating fuels within the meaning hereof shall cover energy products intended for use, intended for sale, or used for heating purposes, except for the products referred to in paragraph (2).

4. Biocomponents shall cover biocomponents within the meaning of the Act of 25<sup>th</sup> August 2006 on Biocomponents and Liquid Biofuels.

#### **Article 87 [Production of Energy Products]**

1. Production of energy products within the meaning hereof shall cover the generation or processing of energy products, including mixing or reclassification of fuel components, pouring of liquefied gas to gas cylinders, and dyeing and marking of energy products.

2. Production of energy products shall not be deemed to be the generation of a small quantity of energy products as a by-product in the process of production of products not being excise goods. A small quantity shall be deemed to be the quantity of energy products, if the revenue earned from the sale thereof constitutes no more than 0.1% of the total revenue within the meaning of the Act of 15<sup>th</sup> February 1992 on Corporate Income Tax (Journal of Laws of 2011, No. 74, item 397, as amended) earned from the economic activity for the previous business year or declared in the case of starting economic activity.

3. The entity generating the small quantity of energy products as by-product referred to in section (2) shall be obliged to:

- 1) notify in writing the competent director of customs office of the type of economic activity and the nature of the products generated – within 14 days of the date of the first generation of those products;
- 2) submit to the competent director of customs office written information on the revenue earned, with the list of quantities of the generated products referred to in section (2), and

on the amount of revenue earned from the sale of those products – at the end of each business year.

4. The production of energy products shall not be deemed to be the addition of additives or admixtures to motor or heating fuels at a quantity constituting no more than 0.2% of the volume of the energy product containing those additives, under exclusion of the dyeing and marking of energy products referred to in Article 90(1).

#### **Article 88 [Tax Base for Energy Products]**

1. The tax base for energy products shall be their quantity expressed, depending on the nature of the product, in litres of the finished product at 15°C, or in kilograms of the finished product, or the calorific value expressed in gigajoules (GJ).

2. The tax base for electricity shall be its quantity expressed in megawatt hours (MWh).

2a. In the case of illegal consumption of electricity, the tax base for the electricity shall be its estimated quantity expressed in megawatt hours (MWh).

2b. The entity which estimates the quantity of the electricity consumed illegally shall be obliged to notify the director of customs office competent for the taxpayer thereof within 7 days of the determination date of the entity performing the illegal consumption of the electricity.

3. The tax base, in the case of using the following products as motor fuels, except for the purposes of navigation:

1) heating fuels,

2) gas oils intended for navigation

- shall be their quantity expressed in litres which may be stored in a tank equipped with a fuel dispenser, or in the tank of a vehicle or another means of transport.

4. The use of the heating fuels or gas oils referred to in paragraph (3) not in conformity with the intended use shall be also deemed to be their holding or sale from a tank equipped with a fuel dispenser.

5. A fuel dispenser specified in separate provisions shall be deemed to be a measuring installation intended to tank motor vehicles, small ships, and small aircraft.

6. For the purposes of excise duty collection, the following calorific values of coal products shall be determined:

1) 23.8 GJ/1000 kilograms for the coal falling within CN code 2701;

2) 8.6 GJ/1000 kilograms for the brown coal falling within CN code 2702;

3) 27.5 GJ/1000 kilograms for the coke falling within CN code 2704.

7. For the purposes of excise duty collection, the following calorific values shall be determined:

- 1) for the gas products falling within CN code 2705 00 00:
    - a) 18.0 GJ/1000 cubic metres for coke oven gas generated in the process of coke production with high-temperature coke coal carbonization,
    - b) 18.0 GJ/1000 cubic metres for expansion gas and tail gases generated within inorganic process lines,
    - c) 7.8 GJ/1000 cubic metres for converter gas which is a by-product during the process occurring in an oxygen-converter during blowing oxygen through molten pig iron,
    - d) 3.6 GJ/1000 cubic metres for blast-furnace gas which is a by-product during the process occurring in a blast furnace during remelting of sintered ore and iron ore into pig iron in the reduction process,
    - e) 1.9 GJ/1000 cubic metres for excess gas which is a by-product of coke dry quenching,
    - f) 1.8 GJ/1000 cubic metres for top gas which is a waste product generated in the process of smelting feeds in the form of briquettes of copper concentrate, coke, and the mixture of Bessemer slag and lead smelting slag in shaft furnaces,
    - g) 18.0 GJ/1000 cubic metres for a gas product not mentioned in item (a)-(f), or when the nature of the gas product may not be determined;
  - 2) for the gas products falling within CN code 2711 11 00 – 45.2 GJ/1000 kilograms;
  - 3) for the energy products falling within CN code from 2711 12 to 2711 19 00 – 46.0 GJ/1000 kilograms;
  - 4) for the gas products falling within CN code 2711 21 00:
    - a) 31.0 GJ/1000 cubic metres of methane-rich gas of the E group,
    - b) 27.0 GJ/1000 cubic metres of nitrogen-rich gas of the Lw group,
    - c) 24.0 GJ/1000 cubic metres of nitrogen-rich gas of the Ls group,
    - d) 20.0 GJ/1000 cubic metres of nitrogen-rich gas of the Ln group,
    - e) 16.0 GJ/1000 cubic metres of nitrogen-rich gas of the Lm group,
    - f) 31.0 GJ/1000 cubic metres for a gas product not mentioned in item (a)-(e);
  - 5) for the gas products falling within ex CN code 2711 29 00:
    - a) 24.0 GJ/1000 cubic metres for the propane-butane-air gas product,
    - b) 115 GJ/1000 cubic metres for the decompressed propane-butane gas product;
  - 6) for the energy products falling within CN code 2901 10 00 – 31.0 GJ/1000 cubic metres;
  - 7) for the gas products not mentioned in sub-paragraphs (1), (2), (4) and (5) – 31.0 GJ/1000 cubic metres.
8. In the case of sale of gas products to a gas end consumer, the quantity of those products resulting from the invoice documenting that sale shall be assumed to calculate the tax base.

**Article 89 [Excise Duty Rates for Energy Products. Declaration on Intending Products for Heating Purposes]**

1. The excise duty rates on energy products shall be as follows:

- a) on coal and coke intended for heating purposes falling within CN codes 2701, 2702, and 2704 00 – PLN 1.28/1 gigajoule (GJ);
- 2) on petrol falling within CN codes 2710 11 45 or 2710 11 49, or products generated from mixing that petrol with biocomponents which meet the quality requirements set out in separate provisions – *PLN 1,565.00/1000 litres* <sup>301</sup>;
- 3) (repealed);
- 4) on jet gasolines falling within CN code 2710 11 31, gasoline type jet fuels falling within CN code 2710 11 70, and other kerosene falling within CN code 2710 19 25 – PLN 1,822.00/1000 litres;
- 5) on jet fuels falling within CN code 2710 19 21 – PLN 1,446.00/1000 litres;
- 6) on gas oils falling within CN code 2710 19 41, and products generated from mixing those oils with biocomponents which meet the quality requirements set out in separate provisions – *PLN 1,196.00/1000 litres* <sup>302</sup>;
- 7) (repealed);
- 8) on biocomponents constituting pure fuels which meet the quality requirements set out in separate provisions intended for stationary motors, regardless of their CN code – *PLN 1,196.00/1000 litres* <sup>303</sup>;
- 9) on gas oils intended for heating purposes falling within CN codes from 2710 19 41 to 2710 19 49, dyed red and marked with a marker pursuant to special provisions – PLN 232.00/1000 litres;
- 10) on heating oils falling within CN codes from 2710 19 51 to 2710 19 69:
  - a) of which 30% or more in terms of volume distils at 350°C, or whose density at 15°C is lower than 890 kilograms/cubic metre, dyed red and marked with a marker pursuant to special provisions – PLN 232.00/1000 litres,
  - b) other, not subject to the obligation of dyeing and marking under special provisions – PLN 64.00/1000 kilograms;
- 11) on lubricating oils, other oils falling within CN codes from 2710 19 71 to 2710 19 99, except for the products falling within CN code 2710 19 85 (white oils, liquid paraffin), and plastic lubricants included in the CN code 2710 19 99 – PLN 1,180.00/1000 litres;
- 12) on gases intended for stationary motors:
  - a) natural gas (wet) and other gas hydrocarbons covered with the CN code 2711, and gas aliphatic hydrocarbons falling within CN code 2901:
    - liquefied – *PLN 695.00/1000 kilograms* <sup>304</sup>,
    - gaseous – *PLN 11.04/1 gigajoule (GJ)* <sup>305</sup>,
  - b) produced in a tax warehouse and meeting the quality requirements set out in separate provisions:
    - biogas, regardless of the CN code – PLN 0,
    - hydrogen and biohydrogen falling within CN code 2804 10 00 – PLN 0,
    - other – *PLN 14.72/1 GJ* <sup>306</sup>,



13) on natural gas (wet) and other gas hydrocarbons falling within CN code 2711, intended for heating purposes – PLN 1.28/1 gigajoule (GJ);

14) on other motor fuels – *PLN 1,822.00/1000 litres* <sup>307</sup>;

15) on other heating fuels:

a) if their density at 15°C is:

– lower than 890 kilograms/cubic metre – PLN 232.00/1000 litres,

– equal to or higher than 890 kilograms/cubic metre – PLN 64.00/1000 kilograms,

b) gaseous – PLN 1.28/1 gigajoule (GJ).

1a. <sup>308</sup> In 2015-2019 the excise duty rates referred to in paragraphs (1)(2), (6), (8), paragraphs (1)(12)(a) and (c), and paragraph (1)(14) shall be reduced by PLN 25.00/1000 litres, PLN 25.00/1000 kilograms, or PLN 0.50/1 gigajoule (GJ).

1b. <sup>309</sup> The minister competent for public finance shall announce with a notice in the Official Journal of the Republic of Poland “Monitor Polski” the excise rates referred to in paragraphs (1)(2), (6), (8), paragraphs (1)(12)(a) and (c), and paragraph (1)(14) valid in the particular calendar years of the period referred to in paragraph (1a), taking into account the reduction amount as specified in paragraph (1a):

1) until 31<sup>st</sup> December of the calendar year preceding each year of that period;

2) immediately – in case of changes of their amount.

2. <sup>310</sup> The amount of excise duty on the energy products referred to in Annex No. 2 hereto other than those specified in paragraphs (1)(1)-(13) intended for purposes other than heating, as additives or admixtures to heating fuels, for stationary motors, or as additives or admixtures to motor fuels, shall be PLN 0, if those products are:

1) held by an entity which consumes them within economic activity for the purposes entitling to apply zero rate excise duty;

2) moved within the territory of the country outside the excise duty suspension arrangement based on the document of supply from a tax warehouse to an entity which consumes them within economic activity for the purposes entitling to apply zero rate excise duty, or to a tax warehouse from an entity which held them to consume them for those purposes;

3) moved within the territory of the country outside the excise duty suspension arrangement based on the document of supply to a tax warehouse, in the case of failure to supply them to an entity which consumes them within economic activity for the purposes entitling to apply zero rate excise duty;

4) acquired within intra-Community acquisition based on the simplified accompanying document or the commercial document by an entity which consumes them within economic activity for the purposes entitling to apply zero rate excise duty;

5) acquired within intra-Community acquisition by a registered consignee to supply them to an entity which consumes them within economic activity for the purposes entitling to

apply zero rate excise duty and moved to that entity to the territory of the country outside the excise duty suspension arrangement based on the document of supply;

6) imported by an entity which consumes them within economic activity for the purposes entitling to apply zero rate excise duty;

7) intended for retail sale in unit packets with a capacity of up to 5 litres or weight of up to 5 kilograms;

8) imported or acquired within intra-Community acquisition in unit packets with a capacity of up to 5 litres or weight of up to 5 kilograms by a natural person for purposes other than conducting economic activity or other than commercial purposes.

2a. <sup>311</sup> The document of supply referred to in paragraphs (2)(2) and (3) may be replaced with another document, if that document contains the same data as required for the document of supply. To the document replacing the document of supply the provisions on the document of supply shall apply accordingly.

2b. <sup>312</sup> In the case of the energy products referred to in Annex No. 2 hereto other than those specified in paragraphs (1)(1)-(13) intended for purposes other than heating, as additives or admixtures to heating fuels, for stationary motors, or as additives or admixtures to motor fuels, it shall be assumed, including for the purposes of the provisions on excise guarantee and the provisions of Section VIa, that the excise duty rate on those products shall be PLN 0, if those products are under the excise duty suspension arrangement.

2c. <sup>313</sup> The excise duty rate on the energy products not specified in Annex No. 2 hereto other than those specified in paragraphs (1)(1)-(13) intended for purposes other than heating, as additives or admixtures to heating fuels, for stationary motors, or as additives or admixtures to motor fuels shall be PLN 0.

2d. <sup>314</sup> The excise duty rate in the case of losses or total destruction of the excise goods specified in Annex No. 2 hereto taxed with zero rate excise duty due to their intended use shall be PLN 1822.00/1000 litres, and if their density at 15°C is equal to or higher than 890 kilograms/cubic metres – PLN 2047.00/1000 kilograms.

3. The excise duty rate on electricity shall be PLN 20.00 per megawatt hour (MWh).

3a. <sup>315</sup> The excise duty rate on electricity consumed:

1) in the process of extraction and reprocessing of the products falling within CN code 2701 on the premises of a mining facility within the meaning of the Act of 9<sup>th</sup> June 2011 – the Geology and Mining Law (Journal of Laws of 2015, item 196 and 1272) by an entity being a taxpayer of excise duty on electricity,

2) in the production of the products falling within CN code 2704 in the process of carbonization of the products falling within CN code 2701 at a temperature over 950°C by an entity being a taxpayer of excise duty on electricity

– shall be PLN 3.00 per megawatt hour (MWh).

3b. <sup>316</sup> The excise duty rate referred to in paragraph (3a) shall apply provided that the taxpayer of excise duty referred to in paragraph (3a) does not benefit from the excise exemption referred to in Article 30(7a) or Article 31d with regard to the electricity.

4. In the case of:

1) the use of the products referred to in paragraphs (1)(9), (10), and paragraph (1)(15)(a) for stationary motors, the use thereof, if they do not meet the conditions set out in special provisions concerning the proper marking and dyeing, and holding them in a tank equipped with a fuel dispenser or selling from such a tank, the excise duty rate of PLN 1,822.00/1000 litres shall apply, and if their density at 15°C is equal to or higher than 890 kilograms/cubic metre – the rate of PLN 2,047.00/1000 kilograms shall apply;

2) exceeding the acceptable levels of consumption referred to in Article 85(2)(2) determined for the excise goods specified in Annex No. 2 hereto referred to in paragraph (2) which are outside the excise duty suspension arrangement, in the case of consuming them for production of other goods, the excise duty rate specified in paragraph (1)(14) shall apply, and in the case of consuming those goods for heating purposes – the rate specified in paragraph (1)(15) shall apply;

3) losses of energy products arisen during the transport with a far-reaching transmission pipeline which exceed the levels of acceptable losses of excise goods specified in Article 85(1)(1), Article 85(2)(1)(a), and in the provisions issued under Article 85(7), the excise duty rate shall apply which is the weighted average of rates for all energy products dispatched in a period of a year to all recipients.

5. The seller of the excise goods not subject to excise exemption due to their intended use specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a), shall be obliged, in the case of sale:

1) to legal persons, organisational units without legal personality, or natural persons conducting economic activity – to receive a declaration from the acquirer that the acquired goods are intended for heating purposes or are to be sold for heating purposes entitling to apply the excise duty rates specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a);

2) to natural persons who do not conduct economic activity – to receive a declaration from the acquirer that the acquired goods are intended for heating purposes entitling to apply the excise duty rates specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a); such a declaration should be appended to the copy of the sale receipt or the copy of another sale document issued to the acquirer, and if this is not possible, the seller shall be obliged to include the number and date of issue of the document confirming that sale on the declaration.

6. <sup>317</sup> The declaration referred to in paragraph (5)(1), with prejudice to paragraph (7), should be appended to the invoice and include:

1) the data of the acquirer, including their business name and the address of the seat or place of residence, and their tax identification number (NIP) or statistical identification number (REGON);

- 2) the quantity, nature, and intended use of the goods acquired;
- 3) the sort, type, and number of heating devices held, and the place (address) where those devices are located;
- 4) the date and place of drafting the declaration;
- 5) a legible signature of the submitter.

7. The declaration referred to in paragraph (5)(1), if signed legibly, may also be given on the invoice issued, whereby the sort, type, and number of heating devices held, and the place (address) where those devices are located must be stated.

8. The declaration referred to in paragraph (5)(2) should include:

- 1) the given name and surname, the ID card number, or the name and number of another document stating identity, the personal number (PESEL) of the acquirer or the person at legal age whose registered place of residence is the same as the acquirer's;
- 2) the registered place of residence of the acquirer and the address of residence, if different from the former;
- 3) the quantity, nature, and intended use of the goods acquired;
- 4) the number of heating devices held for which the goods may be used, and the places (addresses) where those devices are located;
- 5) the sort and type of the heating devices;
- 6) the date and place of drafting the declaration and a legible signature of the submitter.

8a. <sup>318</sup> The declaration referred to in paragraph (5) may be replaced with a representation in the periodic contract entered into by the seller and the acquirer of the excise goods specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a) which has the effect only with regard to the excise goods acquired at the quantities resulting from that contract, such representation to include the data specified in paragraphs (6) or (8), provided that:

- 1) the copy of that contract is submitted to the director of customs office competent for the seller before the first sale of those goods;
- 2) each sale of those goods is confirmed with an invoice.

9. A natural person who does not conduct economic activity and acquires the excise goods specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a) shall be obliged to present the seller with the document referred to in paragraph (8)(1) to confirm their identity.

10. The seller of the excise goods specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a) to natural persons who do not conduct economic activity shall be obliged to apply the excise duty rate specified in paragraph (4)(1) or to refuse to sell those goods, if:

- 1) the person acquiring those goods refuses to present the document referred to in paragraph (8)(1);
- 2) the data included in the declaration are incomplete, illegible, or inconsistent with the data resulting from the document referred to in paragraph (8)(1);

3) the address to which the seller supplied the excise goods is different than the place (address) of location of the heating devices stated in the declaration of the acquirer;

4) the quantity and nature of the excise goods acquired are different than those stated in the declaration.

11. An importer and an entity making intra-Community acquisition of the excise goods specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a) shall submit to the competent director of customs office a declaration that the goods imported are to be intended for heating purposes or sold for heating purposes entitling to apply the excise duty rates specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a).

12. The declaration specified in paragraph (11) should include the data of the importer or the entity making the intra-Community acquisition, the quantity, nature, and intended use of the goods acquired, the date and place of submitting the declaration, and a legible signature of the submitter; copies of the declarations submitted should be stored by the importer and the entity making the intra-Community acquisition for the period of 5 years, counting from the end of the calendar year in which they were drafted, and made available for control.

13. In the case of import of the excise goods specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a), where the director of customs office accepting the customs declaration within the procedure of releasing for free circulation is different than the director of customs office competent with regard to excise duty within the territory of the country for the entity making the import, the importer shall be obliged to draft monthly lists of the declarations referred to in paragraph (11) and submit them to the director of customs office competent for the importer with regard to excise duty within the territory of the country, until the 25<sup>th</sup> day of the month following the month in which the customs declaration is submitted.

14. A seller of the excise goods specified in paragraphs (1)(9), (10), and paragraph (1)(15)(a) shall draft a monthly list of the declarations referred to in paragraph (5) and submit them to the competent director of customs office, until the 25<sup>th</sup> day of the month following the month in which the sale is made; the original declarations should be stored by the seller for the period of 5 years, counting from the end of the calendar year in which they were drafted, and made available for control.

15. <sup>319</sup> The monthly list of declarations should include:

1) in the case of the seller referred to in paragraph (14):

- a) the given name and surname or business name and the place of residence or the address of the seat of the entity submitting the list,
- b) the quantity, nature, and intended use of the goods to which the declaration applies,
- c) the date and place of drafting the list and the legible signature of the person submitting the list,
- d) in the case of the declarations referred to in:
  - paragraph (5)(1) – the given name and surname or business name, the place of residence or the address of the seat, and the tax identification number (NIP) and the statistical identification number (REGON) of the submitter of the declaration,

– paragraph (5)(2) – the given name and surname, the place of residence, and the personal number (PESEL) of the submitter of the declaration;

2) in the case of the importer referred to in paragraph (13) – the data referred to in subparagraphs (1)(a)-(c).

16. <sup>320</sup> If the conditions referred to in paragraphs (5)-(12) are not met, and as a result of tax proceedings, control proceedings, or a tax control the goods referred to in paragraphs (1)(9), (10), and paragraph (1)(15)(a) are found not to be used for heating purposes, or when the acquirer of those goods is not determined, the excise duty rate specified in paragraph (4)(1) shall apply.

## **Article 90 [Marking and Dyeing of Energy Products]**

1. The following products shall be subject to the obligation of marking and dyeing:

- 1) heating oils falling within CN codes from 2710 19 51 to 2710 19 69 of which 30% or more in terms of volume distils at 350°C or the density of which at 15°C is lower than 890 kilograms/cubic metre;
- 2) gas oils falling within CN codes from 2710 19 41 to 2710 19 49 – intended for heating purposes;
- 3) gas oils falling within CN codes from 2710 19 41 to 2710 19 49 – intended for navigation, including fishing.

1a. The energy products referred to in paragraphs (1)(1) and (3) used for navigation by the Armed Forces of the Republic of Poland shall not be subject to the obligation of dyeing.

2. The obligation of marking and dyeing the energy products referred to in paragraph (1) shall be imposed on tax warehouse keepers, importers, entities making intra-Community acquisitions, and tax representatives.

3. The minister competent for public finance shall determine with a regulation:

- 1) the types of substances used for marking and dyeing;
- 2) the quantity of substances used for marking and dyeing, expressed in milligrams/litres of the energy product, after the addition of which the product is deemed to be properly marked and dyed.

4. The minister competent for public finance, while issuing the regulation referred to in paragraph (3), shall take into account:

- 1) the market situation in the turnover of energy products, and in particular the need to counteract avoidance of excise duty taxation;
- 2) technical capabilities allowing for proper marking and dyeing of the energy products;
- 3) the intended use of the energy products.

## **Article 91**

<sup>321</sup> (repealed).

## **Article 91a.**

<sup>322</sup> (repealed).

## **Article 91b.**

<sup>323</sup> (repealed).

## **Chapter 2**

### **Alcoholic Beverages**

#### **Article 92 [Definition of Alcoholic Beverages]**

Alcoholic beverages within the meaning hereof shall cover ethyl alcohol, beer, wine, fermented beverages, and intermediate products.

#### **Article 93 [Ethyl Alcohol: Production, Tax Base, Excise Duty Rate]**

1. Ethyl alcohol within the meaning hereof shall cover:

- 1) any good with the actual alcoholic strength by volume exceeding 1.2% vol. falling within CN codes 2207 and 2208, even if it is a good constituting a part of a good classified under other Chapter of the Combined Nomenclature;
- 2) any good falling within CN codes 2204, 2205 and 2206 00 with the actual alcoholic strength by volume exceeding 22% vol.;
- 3) any beverage containing diluted or undiluted ethyl alcohol.

2. Production of ethyl alcohol within the meaning hereof shall cover the production, processing, purification, denaturation, or dehydration of ethyl alcohol, as well as bottling thereof.

3. The tax base for ethyl alcohol shall be the quantity of hectolitres of 100% vol. ethyl alcohol at 20°C contained in the finished product.

4. The excise duty rate on ethyl alcohol shall be PLN 5,704.00 per 1 hectolitre of 100% vol. of ethyl alcohol of the finished product.

#### **Article 94 [Beer: Production, Tax Base, Excise Duty Rate]**

1. Beer within the meaning hereof shall cover any product falling within CN code 2203 00, and any product containing a mixture of beer with non-alcoholic drinks falling within CN code 2206 00, if the actual alcoholic strength by volume exceeding 0.5% vol.
2. Production of beer within the meaning hereof shall cover the production or processing of beer, as well as bottling thereof.
3. The tax base for beer shall be the quantity of hectolitres of the finished product per 1 degree Plato.
4. The excise duty rate on beer shall be PLN 7.79 per 1 hectolitre per each degree Plato of the finished product.
5. The minister competent for public finance shall determine with a regulation the detailed methods of determining the parameters used to determine the tax base for beer referred to in paragraph (3), in particular by determining the number of degrees Plato in finished beer, taking into account the provisions of the European Union law with regard to excise duty and the beer production technology.

#### **Article 95 [Wine: Production, Tax Base, Excise Duty Rate]**

1. Wine within the meaning hereof shall cover:

- 1) still wine – any good falling within CN codes 2204 and 2205, except for the sparkling wine specified in sub-paragraph (2):
  - a) with the actual alcoholic strength by volume exceeding 1.2% vol. but not exceeding 15% vol., provided that the alcohol contained in the finished product is entirely of fermented origin, or
  - b) with the actual alcoholic strength by volume exceeding 15% vol. but not exceeding 18% vol., provided that they do not contain any enrichment and the alcohol contained in the finished product is entirely of fermented origin;
- 2) sparkling wine – any good falling within CN codes 2204 10, 2204 21 10, 2204 29 10, and any falling within the code 2205 which meets jointly the following conditions:
  - a) it is contained in bottles with “mushrooms stoppers” held in place by ties or fastenings, or it has an excess pressure due to carbon dioxide in solution of three bar or more,
  - b) the actual alcoholic strength by volume exceeding 1.2% vol. but not exceeding 15% vol.,
  - c) the alcohol contained in the finished product is entirely of fermented origin.

2. Production of wine within the meaning hereof shall cover the production or processing of wine, as well as bottling thereof.
3. The tax base for wine shall be the quantity of hectolitres of the finished product.
4. The excise duty rate on wine shall be PLN 158.00 per 1 hectolitre of the finished product.



## **Article 96 [Fermented Beverages: Production, Tax Base, Excise Duty Rate]**

1. Fermented beverages within the meaning hereof shall cover:

1) sparkling fermented beverages – any good falling within CN code 2206 00, and any good falling within CN codes 2204 10, 2204 21 10, 2204 29 10, and any good falling within the code 2205, not mentioned in Article 95, which is contained in bottles with “mushrooms stoppers” held in place by ties or fastenings, or it has an excess pressure due to carbon dioxide in solution of three bar or more, and:

- a) an actual alcoholic strength by volume exceeding 1.2% vol. but not exceeding 13% vol., or
- b) an actual alcoholic strength by volume exceeding 13% vol. but not exceeding 15% vol.

- provided that the alcohol contained in the finished product is entirely of fermented origin;

2) still fermented beverages – not constituting sparkling fermented beverages specified in sub-paragraph (1) – any good falling within CN codes 2204 and 2205, except for the goods specified in Article 95(1), and any good falling within CN code 2206 00, except for the goods specified in Article 94(1):

- a) with actual alcoholic strength by volume exceeding 1.2% vol. but not exceeding 10% vol., or
- b) with actual alcoholic strength by volume exceeding 10% vol. but not exceeding 15% vol.

- provided that the alcohol contained in the finished product is entirely of fermented origin.

2. Production of fermented beverages within the meaning hereof shall cover the production or processing of fermented beverages, as well as bottling thereof.

3. The tax base for fermented beverages shall be the quantity of hectolitres of the finished product.

4. The excise duty rates on fermented beverages shall be as follows:

- 1) on cider and perry falling within CN codes 2206 00 31, 2206 00 51 and 2206 00 81 with the actual alcoholic strength by volume not exceeding 5.0% vol. – PLN 97.00 per 1 hectolitre of the finished product;
- 2) on other fermented beverages – PLN 158.00 per 1 hectolitre of the finished product.

## **Article 97 [Intermediate Products: Production, Tax Base, Excise Duty Rate]**

1. Intermediate products within the meaning hereof shall cover any product with the actual alcoholic strength by volume exceeding 1.2% vol. but not exceeding 22% vol. falling within CN codes 2204, 2205 and 2206 00, except for the products specified in Article 94-96.

2. Production of intermediate products within the meaning hereof shall cover the production or processing of intermediate products, as well as bottling thereof.
3. The tax base for intermediate products shall be the quantity of hectolitres of the finished product.
4. The excise duty rate on intermediate products shall be PLN 318.00 per 1 hectolitre of the finished product.

### **Chapter 3**

#### **Manufactured Tobacco and Raw Tobacco**

#### **Article 98 [Definition of Manufactured Tobacco]**

1. Manufactured tobacco within the meaning hereof shall cover the following products regardless of the CN code:

- 1) cigarettes;
- 2) smoking tobacco;
- 3) cigars and cigarillos.

2. Cigarettes shall be deemed to be:

- 1) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos within the meaning of paragraph (4);
- 2) rolls of tobacco which by simple non-industrial handling are inserted into cigarette-paper tubes;
- 3) rolls of tobacco which by simple, non-industrial handling are wrapped in cigarette paper.

3. For the purposes of excise duty, the rolls of tobacco referred to in paragraph (2) shall be deemed to be:

- 1) two cigarettes – if, without the filter or mouthpiece, it is longer than 8 centimetres but no longer than 11 centimetres;
- 2) three cigarettes – if, without the filter or mouthpiece, it is longer than 11 centimetres but no longer than 14 centimetres;
- 3) four cigarettes – if, without the filter or mouthpiece, it is longer than 14 centimetres but no longer than 17 centimetres;
- 4) five cigarettes – if, without the filter or mouthpiece, it is longer than 17 centimetres but no longer than 20 centimetres.

3a. The provision of paragraph (3) shall apply accordingly to determine what should be deemed to be six, seven, and more cigarettes.

4. Cigars or cigarillos, taking into account their properties and normal expectations of the consumers, shall be deemed to be:

- 1) rolls of tobacco with the outer wrapper made of natural tobacco,
- 2) rolls of tobacco with a threshed, blend filler, wrapped in a leaf of tobacco in the natural colour of the cigar made of reconstituted tobacco covering the product entirely, including the filter, where necessary, but not the tip, in the case of tipped cigars, where the weight of a piece, without the filter or tip, amounts to no less than 2.3 grams and no more than 10 grams, and the circumference, which is equal to at least one-third of the length, is no less than 34 millimetres

– if they are and may be intended exclusively to be smoked as they are.

5. Smoking tobacco shall be deemed to be:

- 1) tobacco which is cut or otherwise split, twisted or pressed in the form of blocks, and suitable for smoking without the need of further industrial processing;
- 2) tobacco refuse which is the residue of tobacco leaves and by-products generated during the processing of tobacco or production of manufactured tobacco, provided for retail sale, which does not constitute cigarettes, cigars, or cigarillos, and suitable for smoking.

6. (repealed).

7. Products consisting in part of substances other than tobacco, but otherwise meeting the criteria specified in paragraph (4) shall be treated as cigars and cigarillos.

8. Products consisting entirely or in part of substances other than tobacco, but otherwise meeting the criteria specified in paragraphs (2), (3) or (5) shall be treated as cigarettes and smoking tobacco. However, the products which do not contain tobacco and are used exclusively for medical purposes shall not be deemed manufactured tobacco.

## **Article 99 [Production and Excise Duty Rates of Manufactured Tobacco]**

1. Production of manufactured tobacco within the meaning hereof shall cover the production, processing, and packing of manufactured tobacco.

1a. <sup>324</sup> Production of cigarettes shall also cover their making, also by a consumer, with the use of a cigarette rolling machine.

1b. <sup>325</sup> Production of cigarettes shall not be deemed to be the production of home-made and hand-made cigarettes by a consumer in a household.

2. The excise duty rates on manufactured tobacco shall be as follows:

- 1) on cigarettes, with prejudice to paragraph (10) – PLN 206.76 per 1000 items, and 31.41% of the maximum retail selling price;

2) on smoking tobacco, with prejudice to paragraph (10) – PLN 141.29 per kilogram, and 31.41% of the maximum retail selling price;

3) <sup>326</sup> on cigars and cigarillos – PLN 393.00 per kilogram.

3. The excise duty rates on cigarettes or smoking tobacco not subject to the obligation of marking with excise stamps and not marked with the maximum retail selling price shall be as follows:

1) on cigarettes – PLN 343.98 per 1000 items;

2) on smoking tobacco – PLN 229.32 per kilogram.

4. The minimum excise duty rate on cigarettes shall be 100% of the total excise duty amount charged on the price equal to the weighted average retail selling price of the cigarettes.

5. (repealed).

5a. The weighted average retail selling price of cigarettes, or the weighted average retail selling price of smoking tobacco shall be the quotient of the total value of all cigarettes or the entire smoking tobacco respectively which are outside the excise duty suspension arrangement, and of the quantity of those cigarettes or of that smoking tobacco respectively.

5b. The total value referred to in paragraph (5a) shall be calculated based on the retail selling prices including all taxes.

5c. The weighted average retail selling price of cigarettes and the weighted average retail selling price of smoking tobacco shall be calculated based on the data from the year preceding the calendar year for which those weighted average retail selling prices are calculated.

5d. For the needs of determining the minimum excise duty rate on cigarettes, the weighted average retail selling price of cigarettes shall be applied calculated based on the data from the first 10 months of the year preceding the calendar year for which that weighted average retail selling price of cigarettes is calculated.

6. The maximum retail selling price shall be assumed to be the price designated and printed by the producer, importer, or the entity making intra-Community acquisition on the unit packet of cigarettes or smoking tobacco, with prejudice to paragraph (9).

7. The producer, importer, or entity making intra-Community acquisition of cigarettes or smoking tobacco intended for sale within the territory of the country shall be obliged to designate and print the maximum retail selling price on the unit packet of those goods.

8. In the case of import or intra-Community acquisition of cigarettes or smoking tobacco which are outside the excise duty suspension arrangement in unit packets without the maximum retail selling price, the excise duty rates shall apply specified in paragraphs (2)(1) and (2) respectively, whereby the maximum retail selling price shall be deemed to be the threefold value of the weighted average retail selling price of cigarettes referred to in paragraph (5d) converted into a unit of 1000 items of cigarettes, and for the smoking tobacco with assumption that a unit of 1000 items of cigarettes corresponds to 1 kilogram of smoking tobacco.

9.<sup>327</sup> In the case of:

1) acquisition or holding of cigarettes or smoking tobacco which are outside the excise duty suspension arrangement in unit packets without or with the maximum retail selling price, if excise duty was not paid on those goods at the amount due, and as a result of a tax control, control proceedings, or tax proceedings tax was not found to be paid,

2) the production referred to in Article 99(1a) which is not in conformity with Article 47

- the excise duty rates shall apply specified in paragraphs (2)(1) and (2) respectively, whereby the maximum retail selling price shall be deemed to be the threefold value of the weighted average retail selling price of cigarettes referred to in paragraph (5d) converted into a unit of 1000 items of cigarettes, and for the smoking tobacco with assumption that a unit of 1000 items of cigarettes corresponds to 1 kilogram of smoking tobacco.

10. In the case referred to in Article 8(5) the excise duty rate shall be applied of 70% of the maximum retail selling price printed on the unit packet.

11. The producer, importer, entity making intra-Community acquisition of cigarettes or smoking tobacco shall be obliged to draft and provide to the minister competent for public finance information on the quantity of cigarettes of particular makes and on the quantity of smoking tobacco which are outside the excise duty suspension arrangement and marked with maximum retail selling price in the period of:

1) the first 10 months of the calendar year,

2) the calendar year

- preceding the calendar year for which the weighted average retail selling prices are calculated.

12. The minister competent for public finance shall determine with a regulation the time limit, form of provision, and scope of the information referred to in paragraph (11), taking into account the need to determine the weighted average retail selling price of cigarettes or the weighted average retail selling price of smoking tobacco.

13. The minister competent for public finance shall announce with a notice in the Official Journal of the Republic of Poland "Monitor Polski" the weighted average retail selling price of cigarettes before the end of the calendar year preceding the calendar year for which it is determined, based on the data referred to in paragraph (11)(1), for the needs of determining the minimum excise duty rate on cigarettes.

14. The minister competent for public finance shall announce with a notice in the Official Journal of the Republic of Poland "Monitor Polski" the weighted average retail selling price of cigarettes and the weighted average retail selling price of smoking tobacco no later than by 1<sup>st</sup> March of the given calendar year, based on the data referred to in paragraph (11)(2).

#### **Article 99a. [Raw Tobacco: Definition, Tax Base, Excise Duty Rate]**

1. Raw tobacco shall be deemed to be tobacco, regardless of moisture content, which is not connected with a live plant and is not yet a tobacco product.
2. The tax base for raw tobacco shall be the quantity of raw tobacco expressed in kilograms.
3. The excise duty rate on raw tobacco shall be PLN 229.32 per kilogram.
4. In the case of:
  - 1) intra-Community acquisition or import of raw tobacco by an entity other than a tax warehouse keeper or an intermediary tobacco entity, or
  - 2) sale of raw tobacco to an entity other than a tax warehouse keeper or an intermediary tobacco entity
  - without marking it with excise stamps, the excise duty rate shall be PLN 458.64 per kilogram.
5. <sup>328</sup> In the case of acquisition or holding of raw tobacco not marked with excise stamps by an entity other than a tax warehouse keeper, an intermediary tobacco entity, a producers group, or a farmer who produced the raw tobacco, if excise duty on the raw tobacco was not paid at the amount due and the entity who sold it may not be determined, the excise duty rate referred to in paragraph (4) shall apply.
6. No:
  - 1) intra-Community acquisition or import of raw tobacco by an entity other than a tax warehouse keeper or an intermediary tobacco entity, or
  - 2) sale of raw tobacco to an entity other than a tax warehouse keeper or an intermediary tobacco entity
  - shall be made in bulk without packaging.

### **SECTION V**

#### **Taxation of Passenger Cars with Excise Duty**

#### **Article 100 [Passenger Car as Subject of Excise Duty Taxation]**

1. In the case of a passenger car, the subject of taxation with excise duty shall be:
  - 1) import of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic;
  - 2) intra-Community acquisition of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic;

3) the first sale within the territory of the country of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic:

- a) produced within the territory of the country,
- b) on which no excise duty was paid due to the activities referred to in sub-paragraph (1) or (2).

2. In the case of a passenger car, the subject of taxation with excise duty shall also be sale within the territory of the country of a passenger car not registered within the territory of the country, occurring following the sale referred to in paragraph (1)(3), if excise duty was not paid earlier at the amount due, and as a result of a tax control, control proceedings, or tax proceedings tax was not found to be paid.

2a. In the case of replacement, before the first registration within the territory of the country, of the engine of a passenger car with a capacity of 2000 cubic centimetres or less with an engine with a capacity of more than 2000 cubic centimetres, it shall be assumed that the subject of the activity subject to taxation is a passenger car with an engine capacity of more than 2000 cubic centimetres.

2b. In the case of installation, before the first registration within the territory of the country, of an engine in a passenger car without engine, it shall be assumed that the subject of the activity subject to taxation is a passenger car with an engine capacity of the installed engine.

2c. The provisions of paragraphs (2a) and (2b) shall apply whether the replacement or installation of the engine were or were not made in conformity with the conditions set out in the provisions of law.

3. If a tax obligation arises towards a passenger car in connection with the performance of one of the activities subject to taxation, no tax obligation arises due to another activity subject to taxation, if the amount of excise duty is specified or declared at the amount due.

4. Passenger cars are motor vehicles and other mechanical vehicles falling within CN code 8703 intended, as a principle, for carriage of passengers, other than those covered with the code 8702, including cars for carriage of passengers and goods (estate cars) and racing cars, excluding motor vehicles and other vehicles which do not require registration pursuant to the provisions on road traffic.

5. For the purposes of this Section, sale of a passenger car shall be deemed to be:

- 1) sale of a passenger car within the meaning of the provisions of the Act of 23<sup>rd</sup> April 1964 – the Civil Code;
- 2) exchange of a passenger car within the meaning of the provisions of the Act of 23<sup>rd</sup> April 1964 – the Civil Code;
- 3) delivery of a passenger car in exchange for debts;
- 4) delivery of a passenger car in place of a pecuniary performance;
- 5) donation of a passenger car within the meaning of the provisions of the Act of 23<sup>rd</sup> April 1964 – the Civil Code;

- 6) delivery of a passenger car in exchange for performing a specific activity;
- 7) provision or use of a passenger car for the purposes of official entertainment or advertisement;
- 8) provision of a passenger car by a taxpayer for the personal use of the taxpayer, partners, shareholders, members of a co-operative and members of their households, members of decision-making bodies of legal persons, members of an association, as well as employees hired by an association and former employees;
- 9) use for the purposes of the economic activity.

6. <sup>329</sup> To the taxation of passenger cars with excise duty Article 10(12) and (13), Article 14(1)-(4), (6)-(8), (10) and (11), Article 16, Article 18(1), (2) and (2a), Article 19, Article 21(5), and Article 27-29, and the provisions issued under Article 20 shall apply accordingly.

### **Article 101 [Arising of Tax Obligation]**

1. A tax obligation due to import of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic shall arise on the day when the customs debt within the meaning of the provisions of the customs law arose.

2. A tax obligation due to intra-Community acquisition of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic shall arise on the day when:

- 1) the passenger car is moved from the territory of a Member State to the territory of the country – if the right to dispose of the passenger car as the owner was acquired before the movement of the car to the territory of the country;
- 2) the right to dispose of the passenger car as the owner was acquired – if the right to dispose of the passenger car as the owner was acquired after the movement of the car to the territory of the country;
- 3) the application for registration of the passenger car within the territory of the country is submitted pursuant to the provisions on road traffic – if the entity applying for registration of the passenger car purchased within intra-Community acquisition within the territory of the country is not the owner of the car.

2a. A tax obligation due to intra-Community acquisition of a passenger car or the sale referred to in Article 100(1)(3)(a) shall not arise, if that passenger car was supplied within intra-Community supply or exported within 30 days of the intra-Community acquisition or the sale referred to in Article 100(1)(3)(a). The fact of the intra-Community supply or export shall be confirmed with the documents referred to in Article 107(3).

3. A tax obligation due to sale within the territory of the country of a passenger car not registered within the territory of the country pursuant to the provisions on road traffic shall arise on the day of supply, and in the cases referred to in Article 100(5)(2)-(9) on the day of performance of those activities.



4. If sale of a passenger car should be confirmed with an invoice, a tax obligation shall arise on the day of the invoice issue, no later however than on the 7<sup>th</sup> day, counting from the day of supply, and in the cases referred to in Article 100(5)(2)-(9) on the day of performance of those activities. The seller shall be obliged to state on the invoice the amount of excise duty on the sale made.

5. If the day on which the tax obligation arises due to an activity subject to taxation referred to in Article 100(1) or (2) may not be determined, the date of the tax obligation shall be the day on which an entitled tax authority or tax control authority determined the performance of the activity subject to taxation.

### **Article 102 [Taxpayer of Excise Duty on Passenger Cars]**

1. The taxpayer shall be a natural person, a legal person, and an organisational unit without legal personality who performs the activities referred to in Article 100(1) or (2).

2. In the cases referred to in Article 100(2)(1) and (2), if the movement of a passenger car from the territory of a Member State to the territory of the country was made by an entity other than the entity which acquired the right to dispose of the passenger car as the owner, the taxpayer shall be the natural person, the legal person, or the organisational unit without legal capacity which acquired the right to dispose of the car as the owner.

3. In the case referred to in Article 101(2)(3), the taxpayer shall be the natural person, the legal person, or the organisational unit without legal personality which applied for the registration of the car within the territory of the country pursuant to the provisions on road traffic.

4. If the passenger car is subject to shared ownership, the taxpayers shall be all co-owners, even if the activities subject to taxation were performed by one co-owner. The co-owners shall be jointly and severally liable for the tax liability.

### **Article 103 [Remitters of Excise Duty on Passenger Cars]**

1. Enforcement bodies specified in the provisions on administrative enforcement proceedings, as well as court bailiffs performing enforcement activities within the meaning of the provisions of the Act of 17<sup>th</sup> November 1964 – the Code of Civil Procedure (Journal of Laws of 2014, item 101 and 293) shall be remitters of excise duty on sale made under the enforcement procedure of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic on which excise duty was not paid.

2. The remitter of excise duty on sale made under the enforcement procedure of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic shall be obliged to calculate and make a payment of the excise duty to the bank account of the competent customs chamber until the 7<sup>th</sup> day of the month following the month in which the car was sold, and within the same time limit to provide the competent director of customs office with a declaration on the amount of the excise duty collected and paid according to the template specified.

3. The minister competent for public finance shall determine with a regulation the detailed scope of data included in the declaration on the amount of the excise duty collected and paid by the remitter, and the template of that declaration, providing explanations as to the manner of proper submission of the declaration and the information where to submit the declaration, as well as providing for the possibility of proper calculation of the excise duty amount.

#### **Article 104 [Tax Base for Passenger Cars]**

1. The tax base in the case of a passenger car shall be:

- 1) the amount due for sale of a passenger car within the territory of the country reduced by the amount of the tax on goods and services and the amount of excise duty due on that passenger car;
- 2) the amount to be paid by the taxpayer for a passenger car – in the case of its intra-Community acquisition, whereby in the case referred to in Article 101(2)(3) the tax base shall be the average market value of the passenger car reduced by the amount of the tax on goods and services and the excise duty amount;
- 3) the customs value of a passenger car increased by the customs duty payable – in the case of import of that car, with prejudice to paragraphs (2)-(5).

2. In the case of a passenger car to which the provisions on the outward processing apply, the tax base shall be the difference between the customs value of the compensating or spare products released for free circulation and the value of the products exported temporarily, increased by the customs duty payable.

3. The tax base for import of a passenger car subject to the temporary importation procedure with partial exemption from import duties, or to the processing under customs control proceedings, shall be the customs value increased by the customs duty which would be payable, if the car was subject to the procedure of releasing for free circulation.

4. The tax base in the case of import of a passenger car shall include also the commission and costs of transport and insurance, if these are not included in the commission but were already borne to the first place of destination within the territory of the country. The first place of destination shall be deemed to be the place specified in the movement document or another document based on which the car is imported.

5. The tax base for import of a passenger car shall include also the fees and other amounts due specified in separate provisions, if customs authorities are obliged to collect those amounts due to the import of the car.

6. The tax base for intra-Community acquisition of a passenger car released previously for free circulation in another Member State pursuant to the customs provisions but not previously registered within the territory of the other Member State, shall be the value referred to in paragraph (1)(3), including commission, costs of transport and insurance, if these are not included in the price but were already borne to the place where the good was subjected to the customs procedure.

- 6a. In the case of passenger cars of the ambulance type, the tax base shall not include the amounts constituting the value of the specialist medical equipment.
7. If the amounts referred to in paragraphs (1)(1) and (2) may not be determined, in particular in the case of a donation of a passenger car, the tax base shall be the average market value of the passenger car in the domestic market reduced by the amount of the tax on goods and services and the excise duty amount.
8. If the tax base amount in the case of the activities referred to in Article 100(1)(2) and (3) and Article 100(2) deviates considerably from the average market value of that car for no specific reason, a tax authority or a tax control authority shall request the taxpayer to change the tax base amount or to provide the reasons for stating the tax base at an amount deviating considerably from the average market value of the passenger car.
9. In case of failing to provide the answer, to change the tax base amount, or to provide reasons for stating the tax base at an amount deviating considerably from the average market value of the passenger car, the tax authority or the tax control authority shall determine the tax base amount.
10. If the tax base amount determined with account of an opinion of an expert deviates by at least 33% from the declared tax base, the costs of the opinion of the expert or experts shall be borne by the taxpayer.
11. The average market value of a passenger car shall be the value determined based on the average price of a passenger car of the same make, model, year, and – if may be determined – with the same equipment and in a similar technical condition as the passenger car acquired within the territory of the country or within intra-Community acquisition quoted in the domestic market on the day when the tax obligation arises.
12. To the conversion of a tax base expressed in a foreign currency the current average exchange rate of the foreign currency shall apply calculated and announced by the National Bank of Poland on the day when the tax obligation arises.
13. If on the day when the tax obligation arises no current average exchange rate of the foreign currency is calculated and announced by the National Bank of Poland, the last current exchange rate calculated and announced by the National Bank of Poland before the day when the tax obligation arises shall apply to the conversion of the tax base expressed in the foreign currency.

#### **Article 105 [Excise Duty Rate on Passenger Cars]**

The excise duty rate on passenger cars shall be as follows:

- 1) 18.6% of the tax base – for passenger cars with an engine capacity of more than 2000 cubic centimetres;
- 2) 3.1% of the tax base – for other passenger cars.

#### **Article 106 [Tax Return and Simplified Return]**

1. A taxpayer due to sale of a passenger car within the territory of the country shall be obliged to the following, without request of a tax authority:

1) to submit excise duty tax returns to the competent director of customs office according to the template specified,

2) to calculate and make a payment of the excise duty to the bank account of the competent customs chamber

- for monthly settlement periods, until the 25<sup>th</sup> day of the month following the month in which the tax obligation arose.

2. A taxpayer due to intra-Community acquisition of a passenger car shall be obliged, following its movement to the territory of the country, without request of a tax authority, to submit a simplified tax return according to the template specified to the competent director of customs office within 14 days, counting from the day when the tax obligation arises, no later however than on the day of registration of the passenger car within the territory of the country pursuant to the provisions on road traffic.

3. A taxpayer due to intra-Community acquisition of a passenger car shall be obliged, following its movement to the territory of the country, without request of a tax authority, to calculate and make a payment of the excise duty to the bank account of the competent customs chamber within 30 days, counting from the day when the tax obligation arises, no later however than on the day of registration of the passenger car within the territory of the country pursuant to the provisions on road traffic.

3a. <sup>330</sup> To the tax returns referred to in paragraphs (1)(1) and (2) the provision of Article 24c shall apply accordingly.

4. The minister competent for public finance shall determine with a regulation the templates of:

1) the tax returns referred to in paragraph (1),

2) the simplified tax returns referred to in paragraph (2)

- with explanations as to the manner of proper submission of those tax returns, information on the time limits and place to submit them, the instruction that the tax returns constitute the basis to issue an enforcement title, as well as providing for the possibility of proper calculation of the excise duty amount.

#### **Article 107 [Refund of Excise Duty on Passenger Cars]**

1. <sup>331</sup> An entity which acquired the right to dispose of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic on which excise duty was paid within the territory of the country as the owner, which makes intra-Community supply or export of that passenger car, or if on behalf of that entity that supply or export are made, shall be entitled to the refund of excise duty upon request

submitted to the competent director of customs office within a year of the date of making the intra-Community supply or export of that passenger car.

2. Excise duty below the minimum refund amount shall not be refunded.

3. The entity referred to in paragraph (1) shall be obliged to hold documents confirming that the intra-Community supply or export were made, which are constituted in particular by movement documents, customs documents, an invoice and supply specification, and other commercial documents connected with the intra-Community supply or export.

4. The confirmation of excise duty payment within the territory of the country or the invoice with the excise duty amount stated, and the documents confirming that the intra-Community supply or export were made referred to in paragraph (3) shall be appended to the request for refund.

5. <sup>332</sup> The tax authorities competent for deciding on the excise duty refund in the case of intra-Community supply or export of a passenger car on which excise duty was paid within the territory of the country shall be the director of customs office to which the tax return for that excise duty or the customs declaration in which the excise duty amount was calculated and disclosed was submitted, or who issued the decision determining the amount of that excise duty, due to the last activity subject to taxation the object of which was that passenger car, and the director of customs chamber competent for that director of customs office with regard to excise duty.

6. The minister competent for public finance shall determine with a regulation the detailed conditions and procedure of refund of excise duty on a passenger car, the minimum excise duty refund amount, the template of the request for excise duty refund, taking into account the need to properly determine the amount of the excise duty refund and the economic viability of the excise duty refund.

## **Article 108**

(repealed).

## **Article 109 [Document Confirming Payment of Excise Duty]**

1. In the case of intra-Community acquisition of a passenger car not previously registered within the territory of the country pursuant to the provisions on road traffic, the competent director of customs office shall be obliged, for the purposes connected with the registration of the passenger car within the territory of the country, to issue for the taxpayer, upon their request, a document confirming the payment of excise duty within the territory of the country, with prejudice to Article 110(6) and Article 111(4).

2. For the purposes connected with the registration of the passenger car within the territory of the country pursuant to the provisions on road traffic, the director of customs office shall be obliged to issue, upon request of a stakeholder, a document confirming the lack of obligation to pay excise duty within the territory of the country, with prejudice to Article 110(6) and Article 111(4).

3. In the case of sale of a passenger car purchased within intra-Community acquisition not previously registered within the territory of the country, the seller shall be obliged to provide the purchaser with the document confirming the payment of excise duty within the territory of the country or the document confirming the lack of obligation to pay excise duty within the territory of the country, with prejudice to paragraphs (3a)-(3c).

3a. An entity making intra-Community acquisition of passenger cars, carrying out sale of new passenger cars for specialized car showrooms, holding long-term contracts with those showrooms, may not provide those showrooms with the original document confirming the payment of excise duty within the territory of the country referred to in paragraph (1), if they are provided with a copy of that document. The copy should include a declaration of the entity making the intra-Community acquisitions of passenger cars that it holds the original of that document.

3b. If the original document confirming the payment of excise duty within the territory of the country referred to in paragraph (1) is provided to a specialized car showroom by an entity making intra-Community acquisition of passenger cars, for the purposes connected with registration of a passenger car within the territory of the country pursuant to the provisions on road traffic, the specialized car showroom may not provide the original document to the purchaser of the passenger car, if they append a declaration that they hold the original document to the invoice.

3c. In the case referred to in paragraph (3a), if the specialized car showroom holds no original document referred to in paragraph (1), for the purposes connected with registration of a passenger car within the territory of the country pursuant to the provisions on road traffic, the showroom shall be obliged to append the invoice with a declaration that they hold a copy of the document referred to in paragraph (3a).

3d. The declaration referred to in paragraphs (3b) and (3c), if legibly signed, may also be given on the invoice issued.

3e. The specialized car showroom referred to in paragraphs (3a)-(3c) shall be deemed to be a natural person, a legal person, or an organisational unit without legal personality operating a car showroom selling passenger cars authorised by the passenger car producer or its authorised representative.

4. The minister competent for public finance shall determine with a regulation the templates of the documents referred to in paragraphs (1) and (2), taking into account the principles of registration of passenger cars and the need to identify passenger cars.

5. The minister competent for public finance may determine with a regulation:

- 1) the detailed mode of the circulation of the documents referred to in paragraphs (1) and (2),
- 2) other documents than the one referred to in paragraph (1) confirming the payment of excise duty within the territory of the country on passenger cars purchased within intra-Community acquisition, for the purposes connected with registration of a passenger car within the territory of the country

- taking into account the market situation with regard to turnover of passenger cars, the needs to document the excise duty payment and the lack of obligation to pay excise duty, the principles or registration of passenger cars, and the need to identify passenger cars.

#### **Article 110 [Exemption of Passenger Car Introduced by Natural Person from Excise Duty]**

1. A passenger car introduced by a natural person entering the territory of the country for permanent stay or returning from a temporary stay from the territory of a Member State to the territory of the country shall be exempted from excise duty, if the following conditions are met jointly:

- 1) the passenger car is intended for personal use of that person;
- 2) the passenger car was for personal use of that person at the place of their previous stay in the Member State for a period of at least 6 months before the change of residence;
- 3) the person provides to the competent director of customs office evidence confirming that the condition referred to in sub-paragraph (2) is met;
- 4) the passenger car shall not be disposed of, hired out or lent during the period of 12 months following their introduction into the territory of the country;
- 5) the passenger car was acquired or released for consumption under the general conditions of taxation in force in the domestic market of one of the Member States in which the natural person had their place of residence, and which is not the subject, on the grounds of exit from the Member State of origin, of any exemption or any refund of consumption tax.

2. Excise exemption shall apply to a passenger car introduced by a natural person entering the territory of the country from the territory of a Member State for permanent stay on marrying, if the conditions referred to in paragraph (1) are met jointly and such introduction takes place within a period beginning two months before the marriage date envisaged and ending four months after the actual marriage date.

3. The natural person referred to in paragraph (2) shall be obliged to provide the competent director of customs office a proof of his marriage within four months of the date given for such marriage.

4. Excise exemption shall apply to a passenger car introduced by a natural person who acquires by inheritance the ownership right or the beneficial ownership of that passenger car which is situated within a Member State, provided that person provides the competent director of customs office with a declaration issued by a notary or other competent authority in the Member State of origin that the property he is introducing has been acquired by inheritance, and provided that the passenger car is introduced not more than two years after the date on which such individual enters into possession of that car.

5. The conditions referred to in paragraphs (1)(2) and (3) shall not apply to the members of foreign service and career soldiers appointed for career military service outside the country, if they provide documents confirming employment at a foreign facility of the Republic of Poland or of secondment to perform career military service outside the country – if registration in the country of the passenger cars used by those entities within the territories of the Member States from which they return is impossible.
6. In the case referred to in paragraphs (1), (2) and (4), the competent director of customs office shall issue a certificate stating the excise exemption.
7. In the case of introduction referred to in paragraphs (1) and (2) from the territory of a Member State, the passenger car shall be exempted from excise duty, if it is introduced not later than 12 months after the transfer of normal residence.
8. The place of permanent residence means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties. In the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living. However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.
9. The provisions of paragraphs (1)-(8) shall apply also to natural persons staying within the territory of the country for permanent stay or returning from a temporary stay from the territory of a Member State of the European Free Trade Association (EFTA) – a party to the Agreement on European Economic Area.

#### **Article 110a. [Exemption of Ambulance Vehicles from Excise Duty]**

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1. <sup>334</sup> Excise exemption shall apply to a passenger car constituting a specialist means of ambulance transport intended for health care activity consisting in providing health services by health care entities entered to the register of entities performing health care activity within the meaning of the Act of 15<sup>th</sup> April 2011 on Health Care Activity (Journal of Laws of 2015, item 618, 788 and 905) which meets the technical and quality properties, excluding the equipment with medical goods, specified in the Polish Norms transposing the European harmonised norms, the detailed data of which are specified in Polish Norm PN-EN 1789+A1.
2. The exemption referred to in paragraph (1) shall apply to the following road ambulances:
- 1) of type B – rescue ambulance;
  - 2) of type C – mobile unit of intensive care.
- 2a. <sup>335</sup> In the case referred to in paragraph (1), the competent director of customs office shall issue a certificate stating the excise exemption, upon request of a stakeholder.



2b. <sup>336</sup> Any amendments to Polish Norm PN-EN 1789+A1 shall result in no amendments to the taxation of passenger cars with excise duty, if not specified herein.

### **Article 111 [Exemption of Passenger Car Introduced Temporarily from Excise Duty]**

1. Excise exemption shall apply to:

1) passenger cars introduced temporarily for private use by a natural person entering the territory of the country from the territory of a Member State, if the following conditions are met jointly:

- a) the natural person has their place of permanent residence within the meaning of Article 110(8) within the territory of the Member State,
- b) the passenger car is intended for personal use of that person,
- c) the period of the temporary introduction of the passenger car is not more than six months in any 12 months,
- d) the passenger car shall not be disposed of, hired out or lent during the period of the temporary introduction, whereby a passenger car belonging to a rental enterprise with its seat within the territory of a Member State may be sub-let for the purpose of its reintroduction, if it is located within the territory of another Member State due to the performance of a rental contract which may be performed within the territory of that Member State; the car may also be returned to the territory of the Member State by an employee of the rental enterprise within the territory of which it was hired, and if the employee has their place of residence within the territory of the country;

2) a passenger car introduced temporarily for professional use by a natural person entering the territory of the country from the territory of a Member State, if the following conditions are met jointly:

- a) the natural person has their place of permanent residence within the meaning of Article 110(8) within the territory of the Member State,
- b) the period of the temporary introduction of the passenger car does not exceed 6 months in a 12-month period,
- c) the passenger car will not be used within the territory of the country for transport of passengers for consideration, or for transport of goods, whether for consideration or not, for industrial or commercial purposes,
- d) the passenger car shall not be disposed of, hired out or lent during the period of temporary introduction,
- e) the passenger car has been acquired or released for consumption under the general conditions of taxation in force in the domestic market of one of the Member States in which the natural person has their place of residence, and which is not the subject, on the grounds of exit from the Member State of origin, of any exemption or any refund of consumption tax, with prejudice to paragraph (2);

3) a passenger car introduced temporarily registered within the territory of the Member State in which the user has their place of residence, used for regular travels from the place of residence to the place of work within the territory of the country, if the conditions referred to in sub-paragraphs (2)(a) and (c)-(e) are met jointly;

- 4) a passenger car introduced temporarily registered within the territory of the Member State in which the student has their place of residence, used by the student within the territory of the country in which the student stays exclusively for the purpose of studying, if the conditions referred to in sub-paragraphs (2)(a) and (c)-(e) are met jointly.
2. The condition referred to in paragraph (1)(2)(e) shall be deemed to be met, if the passenger car has an official registration mark of the Member State within the territory of which it was registered, except for temporary registration marks. In the case of a passenger car registered within the territory of the Member State within the territory of which the issue of official registration marks is not evidence that a passenger car is acquired or released for consumption under the general conditions of taxation in force in the domestic market of one of the Member States, the user should prove otherwise that the required taxes or fees are paid.
3. The exemption referred to in paragraph (1)(3) shall be indefinite.
4. In the case referred to in paragraph (1), the competent director of customs office shall issue a certificate stating the excise exemption, upon request of a stakeholder.
5. In the case referred to in paragraph (1)(2), the place of permanent residence within the territory of a Member State shall be determined based on documents, in particular the identity card or another official document. In case of doubts whether the condition to have a permanent place of residence is met, the excise exemption shall be granted, provided that a monetary deposit in the Polish currency is paid at the amount of the excise duty which would be due.
6. The deposit shall be refunded within two months of the date of providing the proof stating that one has a place of permanent residence within the territory of another Member State. The deposit amount refunded shall bear no interest.
7. In case of failing to provide the proof stating that one has a place of permanent residence within twelve months of the day on which the tax obligation arises, the competent director of customs office shall charge the deposit towards the amount of the excise duty payable.
8. The provisions of paragraphs (1)-(7) shall apply also to natural persons entering the territory of the country from the territory of a Member State of the European Free Trade Association (EFTA) – a party to the Agreement on European Economic Area.
9. (repealed).

#### **Article 112 [Exemption of Passenger Car Introduced from Outside of Territory of European Union and EFTA from Excise Duty]**

1. A passenger car introduced from outside the territories of the Member States and the Member States of the European Free Trade Association (EFTA) – the parties to the Agreement on European Economic Area by a natural person entering the territory of the country for permanent stay or returning from a temporary stay from the territories of those countries shall be exempted from excise duty, if the following conditions are met jointly:

- 1) the passenger car is intended for personal use of that person;

- 2) the passenger car was for personal use of that person at the place of their previous stay outside the territory of the European Union Member State or a Member State of the European Free Trade Association (EFTA) – the party to the Agreement on European Economic Area for a period of at least 6 months before the change of residence;
- 3) the person provides to the competent director of customs office evidence confirming that the condition referred to in sub-paragraph (2) is met;
- 4) that person stayed outside the territory of the European Union Member State or a Member State of the European Free Trade Association (EFTA) – the party to the Agreement on European Economic Area for a period of at least 12 consecutive months before the change of residence;
- 5) the passenger car shall not be disposed of, hired out or lent during the period of 12 months, counting from the day of its introduction into the territory of the country.

2. The conditions referred to in paragraphs (1)(2) and (3) shall not apply to the members of foreign service and career soldiers referred to or appointed for career military service outside the country, if they provide documents confirming employment at a foreign facility of the Republic of Poland or of secondment to perform career military service outside the country – if registration in the country of the passenger cars used by those entities in the countries from which they return is impossible.
3. In the case referred to in paragraph (2), the excise exemption shall apply also to passenger cars introduced from the territory of a Member State or a third country, acquired on the way back from the territory of a third country.
4. The provisions of Article 110(7) and (8) shall apply accordingly.

### **Article 113 [Delegation of Legislative Powers to Introduce Exemptions from Excise Duty]**

1. The minister competent for public finance may introduce exemptions of passenger cars from excise duty with a regulation, if this results from:

- 1) the provisions of the European Union law,
  - 2) international agreements,
  - 3) the principles of reciprocity
- by specifying the detailed scope, and the conditions and procedure of their application, taking into account the nature of turnover of passenger cars and the need to provide for proper control.

2. The exemptions from excise duty may be by means of refund of excise duty.

3. In the case of the excise exemption by means of refund of excise duty, the competent director of customs office shall determine with a decision the amount of the excise duty refund.

## **SECTION VI**

### **Excise Stamps**

#### **Chapter 1**

#### **Obligation of Marking with Excise Stamps**

##### **Article 114 [Excise Goods Subject to Marking with Excise Stamps]**

The obligation of marking with excise stamps shall apply to the excise goods specified in Annex No. 3 hereto.

##### **Article 115 [Producer of Excise Stamps]**

1. The minister competent for public finance shall entrust the production of excise stamps to a producer which provides for the security of production and storage of those stamps.
2. The producer of excise stamps may dispose of those stamps exclusively to the minister competent for public finance.
3. The producer of excise stamps may issue excise stamps exclusively to the directors of customs office competent in the matters of excise stamps, or entities authorised thereby.

##### **Article 116 [Entities Obligated to Mark Excise Goods and Their Obligations]**

1. The obligation to mark excise goods with tax excise stamps, with prejudice to paragraph (1a), shall be imposed on an entity registered as specified in Article 16 which is:

- 1) <sup>337</sup> a tax warehouse keeper, with prejudice to sub-paragraphs (6) and (7);
- 2) an importer;
- 3) an entity making intra-Community acquisition;
- 4) a tax representative;
- 5) an entity producing excise goods referred to in Article 47(1)(1), (2), (4) or (5);
- 6) the owner of excise goods referred to in Article 13(3);
- 7) <sup>338</sup> an entity intending to acquire excise goods and that has been granted the authorisation referred to in Article 54(1).

1a. The obligation to mark raw tobacco with tax excise stamps shall be imposed on an entity performing the activities referred to in Article 9b(1)(1)-(3).

1b. <sup>339</sup> A wine producer who is a farmer and produces less than 100 hectolitres of wine in a marketing year within the meaning of the Act of 12<sup>th</sup> May 2011 on Production and Bottling of Wine Products, Trading Therein, and Organisation of Wine Market, exclusively from grapes from own crops, who failed to submit the registration request referred to in Article 16(1) shall be obliged to mark the excise goods with tax excise stamps before placing them on the market.

2. Whenever in this Section an importer is referred to, it shall be construed also as an entity not being an importer but on which the obligation to paid customs duty referred to in Article 13(2) is imposed.

3. The obligation to mark excise goods with legalisation excise stamps shall arise, if there are excise goods outside the excise duty suspension arrangement which are not marked, are marked improperly or with improper excise stamps, in particular with damaged excise stamps, if those goods are intended for resale.

4. In the case of the excise goods referred to in paragraph (3), the holder of those goods, in the case of excise goods disposed of by the competent public administration authority pursuant to the provisions on administrative enforcement proceedings – the purchaser of those goods shall be obliged to purchase excise stamps and mark the goods therewith. A report shall be drafted from the procedure of marking the goods.

5. The holder of the goods referred to in paragraph (3) intended for resale shall be obliged to draft a list of those goods and present it for approval to the competent director of customs office.

6. The provision of paragraph (5) shall not apply to excise goods on which excise duty was paid, re-bottled, or re-weighed into other unit packets of excise goods at the place of their retail sale.

### **Article 117 [Time Limit of Marking with Excise Stamps]**

1. Excise goods subject to the obligation of marking with excise stamps should be properly marked with proper tax excise stamps before the completion of the excise duty suspension arrangement, and in the cases referred to in Article 9b(1)(2) and in Article 47(1)(1), (2), (4) or (5), before selling them or transferring to the finished products warehouse, as the case may be.

2. Excise goods subject to the obligation of marking with excise stamps may not, without their previous proper marking with proper tax excise stamps:

1) be imported, unless they are placed under the excise duty suspension arrangement, or entered to a free zone or a free warehouse, or placed under the customs warehousing arrangement, and properly marked before the completion of the excise duty suspension arrangement, or before placing under the release for free circulation arrangement for the

purpose of sale within the territory of the country outside the excise duty suspension arrangement;

2) be moved to the territory of the country as a result of intra-Community acquisition outside the excise duty suspension arrangement;

3) moved to the territory of the country under the excise duty suspension arrangement as a result of intra-Community acquisition by a registered consignee.

3. Excise goods subject to the obligation of marking with excise stamps may not, without their previous proper marking with proper excise stamps, be subject of sale within the territory of the country. The provisions of paragraphs (1) and (2) shall apply accordingly.

### **Article 118 [Exemption from Obligation of Marking with Excise Stamps]**

1. Exemption from the obligation of marking with excise stamps shall apply to the excise goods which are:

1) completely unsuitable for use;

2) removed from a tax warehouse and intended for intra-Community supply or export;

3) placed in a free warehouse or free zone and intended for sale in trading units located there;

4) transported through the territory of the country within the transit procedure within the meaning of the provisions of customs law;

5) transported from the territory of one Member State to the territory of another Member State through the territory of the country;

6) produced on the conditions referred to in Article 47(1)(1), (2), (4) or (5) and intended for intra-Community supply or export.

2. Exemption from the obligation of marking with excise stamps shall apply also to the excise goods which are exempt from excise duty or taxed with zero rate excise duty.

3. (repealed).

4. <sup>340</sup> (repealed).

5. The excise goods referred to in paragraphs (1)(3) and (6) may be placed in a free warehouse or free zone, or supplied from a finished products warehouse without excise stamps, provided that the competent director of customs office is notified thereof before the day of placing the excise goods in the free warehouse or free zone, or supplying the excise goods from the finished products warehouse. The competent director of customs office may order the excise goods to be escorted to the border of the territory of the country in the case of their intra-Community supply or export, or until their entry to the free warehouse or free zone. The escort shall be made at the cost of the taxpayer or recipient of those goods.

6. The condition of exemption from the obligation to mark the excise goods referred to in paragraph (1)(4) with excise stamps shall be the provision of guarantee for the excise duty

amount on the conditions and under the mode applied to guarantee of customs duties under the provisions of the customs law.

7. <sup>341</sup> (repealed).

8. <sup>342</sup> (repealed).

### **Article 119 [Delegation of Legislative Powers to Exempt from Obligation of Marking with Excise Stamps]**

1. The minister competent for public finance may exempt some excise goods from the obligation of marking with excise stamps with a regulation, if:

- 1) it is substantiated by a significant interest of the State or of entities obliged to mark excise goods with excise stamps;
- 2) it results from the provisions of the European Union law or international agreements;
- 3) it is suggested by the intended use of some of the excise goods, in the forms of samples for scientific research, laboratory tests, or quality tests.

2. The minister competent for public finance, in the regulation referred to in paragraph (1), shall determine the period for which the exemption is introduced, and the conditions and procedure of application of the exemptions with regard to some groups of excise goods or due to their intended use, taking into account the market situation in the turnover of excise goods, the nature of turnover of those goods, and the need to provide for the control of that trading.

## **Chapter 2**

### **Principles and Mode of Affixing Excise Stamps**

#### **Article 120 [Forms and Manner of Affixing Excise Stamps. Unit Packet of Excise Good]**

1. Excise stamps may in particular have the form of bands, guild marks, or stamp imprints.

2. An excise stamp shall be affixed to the unit packet of the excise good or directly to the excise good in such a manner that the removal of the stamp or opening of the packaging at the place intended for opening, or the use of the good, results in permanent and visible damage to the stamp in a manner making its re-use impossible, unless the excise stamp is affixed directly to the excise good in a permanent manner.

3. The unit packet of the excise good shall be the self-contained packaging, protecting directly the excise good:

- 1) disposable or for multiple use, and

- 2) adjusted to, or allowing for its adjustment to storage, exhibition, and sale of the excise good in or from it, and
- 3) having a closing or indicated place and manner of opening which is, or may be, adjusted to the direct or indirect consumption of the good, or allows for direct or indirect consumption of the good, and
- 4) adjusted for packing, storing, and transporting it in secondary packaging or in transport packaging.

#### **Article 121 [Decision on Manner of Affixing Excise Stamps to Unit Packets]**

1. The director of customs office competent for excise stamps, in the case of atypical unit packets of excise goods, upon written request of the entity obliged to mark excise goods with excise stamps, shall determine with a decision the manner to affix the excise stamps to the unit packets of the excise goods, or to the excise goods, taking into account the general rules for affixing excise stamps.
2. The decision referred to in paragraph (1) shall specify in particular the nature, name, and origin of the excise good, the content and type of the unit packet of the excise good, the detailed manner to affix the excise stamps, and the period for which the decision is issued.

#### **Article 122 [Delegation of Legislative Powers to Determine Excise Stamps]**

1. The minister competent for public finance shall determine with a regulation:
  - 1) the forms of excise stamps and their templates, the quality criteria of excise stamps, the elements of excise stamps, and the detailed manners of affixing them to the unit packets typical for excise goods of given nature;
  - 2) the template of the request for determination of the manner to affix excise stamps.
2. The minister competent for public finance, while issuing the regulation referred to in paragraph (1), shall take into account:
  - 1) the need to provide for the control over the turnover of excise goods and the proper affixing of excise stamps;
  - 2) the nature of excise goods subject to the obligation of marking with excise stamps;
  - 3) the diversity of the unit packets used;
  - 4) the need to apply proper safeguards in the excise stamps.

#### **Article 123 [Removal of Excise Stamps Affixed]**

1. Excise stamps may be removed from unit packets of excise goods or from excise goods to which they are affixed, if the excise goods are not to be sold within the territory of the country.



2. The consent for the removal of excise stamps shall be issued by the competent director of customs office, upon written request of the entity obliged to mark excise goods with excise stamps, or of the owner of the excise goods marked with excise stamps.
3. The removed excise stamps shall be:
  - 1) returned to their producer, or
  - 2) immediately destroyed under the supervision of the competent director of customs office.
4. The minister competent for public finance shall determine with a regulation:
  - 1) the detailed cases in which excise stamps may be removed from the unit packets of excise goods or from the excise goods;
  - 2) the conditions and procedure of removing excise stamps;
  - 3) the template of the request for removal of excise stamps.
5. The minister competent for public finance, while issuing the regulation referred to in paragraph (4), shall take into account the cases of return of excise goods in connection with physical defects thereof, and the cases of exporting excise goods outside the territory of the country, as well as the need to provide for the security of the excise stamps system.

#### **Article 124 [Delegation of Legislative Powers to Introduce Obligation to Cancel Excise Stamps]**

The minister competent for public finance may introduce with a regulation the obligation to cancel excise stamps affixed to unit packets of excise goods or to excise goods, to make their re-use impossible, also determining the detailed conditions, manner and procedure of cancelling excise stamps, taking into account the need to provide for the security of the excise stamps system.

### **Chapter 3**

#### **Procedure to Receive Excise Stamps**

#### **Article 125 [Entity Receiving Excise Stamps. Demand for Excise Stamps]**

1. Tax excise stamps shall be received by an entity registered pursuant to Article 16 which is:
  - 1) a tax warehouse keeper, with prejudice to sub-paragraph (6);
  - 2) an importer;
  - 3) an entity making intra-Community acquisition;
  - 4) a tax representative;
  - 5) an entity making the production referred to in Article 47(1)(1), (2), (4) or (5);

6) the owner of excise goods referred to in Article 13(3);

7) <sup>343</sup> an entity referred to in Article 116(1)(7).

1a. In the case of excise goods which following import and release for free circulation are to be sent by a registered consignor under the excise duty suspension arrangement to a tax warehouse within the territory of the country, the excise stamps may be provided to an importer, a tax warehouse keeper, or the owner of goods referred to in Article 13(3), if they remove those goods from the tax warehouse.

1b. Tax excise stamps shall be received also by an entity performing the activities referred to in Article 9b(1)(1)-(3).

1c. <sup>344</sup> Tax excise stamps shall be received also by a wine producer referred to in Article 116(1b).

2. Legalisation excise stamps shall be sold to:

1) a holder of excise goods which are outside the excise duty suspension arrangement, and are not marked, are marked improperly or with improper excise stamps, in particular with damaged stamps;

2) a purchaser of the goods referred to in sub-paragraph (1) disposed of by the competent public administration authority.

3. An entity obliged to mark excise goods with excise stamps shall submit provisional information on the demand for excise stamps for the calendar year to the office providing service to the minister competent for public finance, until 30<sup>th</sup> October of the year preceding the year for which the provisional information is provided.

4. If during the calendar year circumstances occur substantiating the submission, change, or withdrawal of the provisional information on the demand for excise stamps, the entity to which they regard shall be obliged, upon the occurrence of those circumstances, to immediately submit such information, change or withdrawal to the office providing service to the minister competent for public finance, whereby the final change of the provisional information on demand for excise stamps in the case of:

1) manufactured tobacco, may not be submitted following 30<sup>th</sup> September of the given calendar year, and if it is submitted after 1<sup>st</sup> September of the given calendar year, it may not exceed 5% of the quantity of order included in the last change of the provisional information, and if there was no such change – in the provisional information;

2) change of templates of excise stamps, may not be submitted following the last day of the fourth month preceding the date of introduction of the new templates of excise stamps, and if it is submitted after the first day of the fourth month preceding the date of introduction of new templates of excise stamps, it may not exceed 5% of the quantity of order included in the last change of the provisional information, and if there was no such change – in the provisional information.

4a. An entity which failed to collect the excise stamps covered with the final change of the provisional information on the demand for excise stamps referred to in paragraph (4) until the

end of the given calendar year, shall pay the amount covering the costs of production of the excise stamps.

5. Failure to submit the provisional information or the change of the provisional information shall result in that the effects of the lack of excise stamps resulting from that failure burden the entity obliged to mark excise goods with excise stamps which failed to meet its obligation in that respect.

6. The minister competent for public finance shall determine with a regulation the template of the provisional information on the demand for excise stamps, taking into account the need to provide the entities obliged to mark excise goods with excise stamps with the proper number and types of those stamps.

### **Article 126 [Procedure for Issue of Tax Excise Stamps or Sale of Legalisation Excise Stamps]**

1. The decision on issue of tax excise stamps or sale of legalisation excise stamps shall be issued by the director of customs office competent for excise stamps, upon written request of the entity obliged to mark excise goods with excise stamps.

2. While submitting the request referred to in paragraph (1), the submitting entity shall append, as the case may be, the documents on:

- 1) tax arrears in taxes constituting the revenue of the State budget, or on no such arrears;
- 2) the type of the economic activity and whether it has been granted an authorisation, concession, or obtained an entry to the register of entrepreneurs conducting regulated activity within the meaning of the provisions of the Act of 2<sup>nd</sup> July 2004 on Freedom of Economic Activity;
- 3) the tax registration referred to in Article 16;
- 4) the notification of planned intra-Community acquisition – in the case referred to in Article 78(1)(1);
- 5) the provided guarantee of tax duties;
- 6) the authorisation for:
  - a) operating a tax warehouse,
  - b) acquisition or a single acquisition of excise goods as registered consignee,
  - c) (repealed),
  - d) performing activities as tax representative,
  - e) exit of excise goods from a tax warehouse as the taxpayer referred to in Article 13(3),
  - f) <sup>345</sup> exit of excise goods from a tax warehouse as the entity referred to in Article 116(1)(7);
- 7) the excise goods held.

3. Prior to issuing the decision on issue or sale of excise stamps, the entity obliged to mark excise goods with excise stamps which submitted a request for:

- 1) issue of tax excise stamps – shall pay the amount constituting the value of the tax excise stamps or the amount covering the costs of production of the tax excise stamps;
  - 2) sale of legalisation excise stamps – shall pay the amount due for those stamps.
4. The amount paid to cover the costs of production of tax excise stamps shall constitute at least 80% of the total costs of their production.
  5. The amounts gained from the sale of legalisation excise stamps and those gained from the amounts paid to cover the costs of production of tax excise stamps shall constitute the revenue of the State budget.
  6. The minister competent for public finance shall determine with a regulation the value of:
    - 1) the amounts constituting the value of tax excise stamps,
    - 2) the amounts paid to cover the costs of production of tax excise stamps,
    - 3) the amounts due for the sale of legalisation excise stamps,
    - 4) the costs of production of legalisation excise stamps
    - taking into account the need to secure gains due to excise duty, the amount of excise duty on excise goods subject to the obligation of marking with excise stamps, and expenditures incurred for the production of excise stamps.

#### **Article 127 [Refusal to Issue or Sell Excise Stamps]**

1. The director of customs office competent for excise stamps shall refuse to issue or sell excise stamps, if:
  - 1) the amount constituting the value of tax excise stamps or the amount covering the costs of production of tax excise stamps is not paid, or
  - 2) the amount due for legalisation excise stamps is not paid, or
  - 3) the required documents are not submitted.
2. The director of customs office competent for excise stamps, bearing in mind that the requesting entity may be burdened with public law liabilities constituting the revenue of the State budget, may refuse to issue tax excise stamps to the requesting entity:
  - 1) which has tax arrears in taxes constituting the revenue of the State budget, or
  - 2) towards which enforcement, insolvency, or liquidation proceedings are carried out, except for the liquidation of a State enterprise for the purpose of its privatisation.
3. In case of issuing a decision on refusal to issue or sell excise stamps by the director of customs office competent for excise stamps, the amount constituting the value of tax excise stamps and the amount covering the costs of production of tax excise stamps, or the amount due for legalisation excise stamps respectively shall be repaid within 7 days of the issue date of the decision on refusal.

### **Article 128 [Entities Issuing Excise Stamps]**

1. <sup>346</sup> Excise stamps shall be issued, upon request of the entity obliged to mark excise goods with excise stamps, by:
  - 1) the director of customs office competent for excise stamps;
  - 2) the producer of excise stamps.
2. <sup>347</sup> The issue of excise stamps by their producer shall be made based on the authorisation to collect excise stamps issued by the director of customs office competent for excise stamps.

### **Article 129 [Delegation of Legislative Powers to Determine Requests for Issue, Sale, and Collection of Excise Stamps]**

The minister competent for public finance shall determine with a regulation:

- 1) the template of the request for issue of tax excise stamps or for sale of legalisation excise stamps, and for issue of authorisation to collect excise stamps, as well as the template of that authorisation
- 2) the detailed list and manner of submission of the documents appended to the request by the requesting entity
  - taking into account the need to identify the type and number of issued excise stamps, the identification of entities obliged to mark excise goods with excise stamps, and the frequency of submission of the requests.

## **Chapter 4**

### **Rights and Obligations Resulting from Application of Excise Stamps**

### **Article 130 [Turnover of Excise Stamps]**

1. Excise stamps and authorisations to collect excise stamps may not be disposed of or given or provided on any other conditions whatsoever, whether for consideration or not, to other entities, with prejudice to paragraphs (3)-(5).
2. Excise stamps shall be returned to:
  - 1) the director of customs office competent for excise stamps from whom those stamps were received;
  - 2) the producer of the excise stamps.
3. An importer, an entity making intra-Community acquisition, and a tax representative may provide excise stamps to an entity having its seat outside the territory of the country to affix

them to the unit packets of excise goods or to the excise goods which are the subject of import or intra-Community acquisition.

4. The owner of excise goods referred to in Article 13(3) may provide excise stamps to a tax warehouse keeper or an entity having its seat within the territory of a third country to affix them to the unit packets of excise goods or the excise goods constituting their ownership.

4a. <sup>348</sup> The entity referred to in Article 116(1)(7) may provide excise stamps to a tax warehouse keeper to affix those stamps to unit packets of excise goods or to excise goods.

5. Excise stamps may be transferred to successors or transformed entities in the case of their entry into the rights or obligations provided for by the provisions of the tax law and specified in the Act of 29<sup>th</sup> August 1997 – the Tax Ordinance.

6. The minister competent for public finance shall determine with a regulation the procedure of provision of excise stamps to successors or transformed entities, taking into account the need for the control over the provision of excise stamps, and the identification of the type and number of the excise stamps provided.

#### **Article 131 [Loss, Destruction and Damage of Excise Stamps]**

1. <sup>349</sup> (repealed).

2. <sup>350</sup> (repealed).

3. <sup>351</sup> (repealed).

4. <sup>352</sup> (repealed).

5. <sup>353</sup> (repealed).

6. Excise stamps must be stored and transported in a manner providing for their security from theft, destruction, or damage.

7. Damaged excise stamps shall be deemed to be original excise stamps in which permanent and visible infringement of physical properties allows for the identification of the stamps in terms of their authenticity, type, name, dimensions, series, record number, and production date.

8. Destructed excise stamps shall be deemed to be original excise stamps in which permanent and visible infringement of physical properties does not allow for the identification of the stamps in terms of their type, name, dimensions, series, identification number, and production date.

9. Lost excise stamps shall be deemed to be original excise stamps received by the entity obliged to mark excise goods with those stamps, which lost them as a result of circumstances other than:

- 1) affixing the excise stamps to an excise good or a unit packet of the excise good, and placing the good with the excise stamp affixed on the market;
- 2) returning the excise stamps to the director of customs office competent for excise stamps from whom the entity received the excise stamps, or to their producer;

3) providing the excise stamps by an importer, an entity making intra-Community acquisition, and a tax representative to an entity having its seat outside the territory of the country to affix them to the unit packets of the excise good or to the excise good which is the subject of import or intra-Community acquisition;

4) <sup>354</sup> providing the excise stamps by the owner of excise goods referred to in Article 13(3), or the entity referred to in Article 116(1)(7) to a tax warehouse keeper to affix them to unit packets of excise goods or to excise goods;

5) seizing the excise stamps by a competent public administration authority in connection with a control of the excise stamps system.

10. <sup>355</sup> The minister competent for public finance shall determine with a regulation the manner of transport and storage of excise stamps, taking into account the need to provide for the proper control over the issued excise stamps.

### **Article 132 [Account of Excise Stamps Provided]**

1. An importer, an entity making intra-Community acquisition, and a tax representative shall be obliged to obtain from an entity having its seat outside the territory of the country an account of the excise stamps provided thereto.

2. The owner of excise goods referred to in Article 13(3) shall be obliged to obtain from a tax warehouse keeper or from an entity having its seat within the territory of a third country an account of the excise stamps provided thereto.

2a. <sup>356</sup> The entity referred to in Article 116(1)(7) shall be obliged to obtain from a tax warehouse keeper an account of the excise stamps provided thereto.

3. The account should include in particular the information on the type and number of the excise stamps provided to be affixed to unit packets of excise goods or to excise goods, used to be affix, damaged, destroyed, lost, or unused.

4. <sup>357</sup> The damaged excise stamps, or the excise stamps which are not to be used to mark excise goods, should be returned to the entity which issued them within 30 days of the date of their receipt by the entity to which those excise stamps were issued from the entity to which the excise stamps were provided to be affixed to unit packets of excise goods, or to excise goods.

5. The minister competent for public finance shall determine with a regulation the detailed scope and time limit to make accounts of excise stamps, taking into account the need to provide for the proper and timely accounts of the excise stamps.

### **Article 133 [Procedure in Case of Damaged and Destructed Excise Stamps]**

1. Damaged and destructed excise stamps may not be used to be affixed to excise goods or unit packets of excise goods.

2. Excise goods marked with damaged or destructed excise stamps may not be sold.

3. <sup>358</sup> Excise stamps damaged or destructed prior to their affixing shall be returned within 30 days from finding their damage or destruction to the entity which issued them, or destroyed under the supervision of the competent director of customs office.

#### **Article 134 [Return of Unused Excise Stamps]**

1. <sup>359</sup> If a new template of an excise stamp is introduced, the entities holding the previous excise stamps shall be obliged to return the unused excise stamps to the entity which issued them, within 30 days of the date on which that template is introduced.
2. <sup>360</sup> The previous excise stamps affixed to unit packets of excise goods or to excise goods before introduction of the new template of the excise stamp shall remain valid for 12 months, counting from the introduction date of the new template.
3. Should the decision referred to in Article 126(1) be found invalid, the entity obliged to mark excise goods with excise stamps shall be obliged to return the excise stamps unused as of the service date of the decision on invalidity, to the entity which issued those stamps, within 14 days of the service date of the decision on invalidity.
4. Should the activities referred to in Article 16(1) ceased to be carried out, the entity obliged to mark excise goods with excise stamps shall be obliged to account for the excise stamps and to return the unused excise stamps before the date of submitting the notification of cessation of performing those activities.
5. In case of take-over of the rights and obligations of an entity obliged to mark excise goods with excise stamps, the account of excise stamps and return of unused stamps shall be made by the successor of the entity obliged to mark excise goods with excise stamps, or by other persons which took over its rights and obligations, within 14 days of the take-over of the rights and obligations.
6. The minister competent for public finance may determine with a regulation the validity period of the previous excise stamps longer than that specified in paragraph (2), except for the excise stamps for manufactured tobacco, and vary the period depending on the excise goods to which the excise stamps are affixed, taking into account the need to provide for the security of the excise stamps system and the control over the turnover of excise goods.

#### **Article 135 [Refund of Amount for Unused and Undamaged Excise Stamps]**

1. An entity returning unused and undamaged excise stamps shall be entitled, with prejudice to Article 136(8), to immediate refund of the amounts paid constituting the value of tax excise stamps or amounts due for legalisation excise stamps, as the case may be, reduced by the costs of their production.
2. The refund shall not apply to the amounts paid to cover the costs of production of tax excise stamps, except for the amounts paid to cover the costs of production of the tax excise stamps returned in connection with the introduction of a new excise stamp template or finding the invalidity of the decision referred to in Article 126(1), if the stamps returned are



unused and undamaged, and they are returned within the time limit specified in Article 134(1)(3).

3. The minister competent for public finance may determine by a regulation other cases of refund of the amounts paid constituting the value of the tax excise stamps, taking into account the rules concerning the movement of excise goods and the cases in which the excise good is not to be released for consumption within the territory of the country.

### **Article 136 [Validity Period of Excise Stamps]**

1. <sup>361</sup> An entity obliged to mark spirit products or wine products with excise stamps shall be obliged, within 24 months of the receipt date of the stamps, to affix them to the unit packets of the spirit or wine products, or to the spirit or wine products, and in the case of import and intra-Community acquisition – to bring the spirit or wine products marked with those stamps to the territory of the country.

2. After the period referred to in paragraph (1) expires, the excise stamps shall expire for the entity which received them based on the decision of the director of customs office competent for excise stamps, and may not be affixed by that entity to unit packets of spirit or wine product, or to spirit or wine products.

3. <sup>362</sup> The stamps referred to in paragraph (2) shall be returned within 60 days of the expiry date to the entity which issued them.

4. An entity obliged to mark manufactured tobacco with excise stamps shall be obliged to affix the excise stamps to unit packets of manufactured tobacco or to manufactured tobacco until the end of the calendar year corresponding with the year of production of the excise stamps printed on those stamps.

5. From 1<sup>st</sup> January of the given calendar year, exclusively excise stamps with the printed production year corresponding to the beginning calendar year may be affixed to unit packets of manufactured tobacco or to manufactured tobacco.

6. The excise stamps affixed to unit packets of manufactured tobacco or to manufactured tobacco in the given calendar year shall remain valid until the last day of February of the next calendar year.

7. <sup>363</sup> The excise stamps for manufactured tobacco unused by 31<sup>st</sup> December of the given calendar year shall be returned by the end of February of the next calendar year to the entity which issued them.

8. The entity returning the excise stamps after the periods specified in paragraphs (3) and (7) shall not be entitled to the refund of the amounts constituting the value of tax excise stamps, the amounts paid to cover the costs of production of tax excise stamps, and the amounts due for legalisation excise stamps.

9. Upon request of an entity obliged to mark manufactured tobacco with excise stamps, the issue of a decision on issue or sale of excise stamps for manufactured tobacco with the printed year of production corresponding with the next calendar year and on issue of authorisation to collect those excise stamps, and the issue of the excise stamps, may take

place before 1<sup>st</sup> January of the calendar year corresponding to the production year of the excise stamps printed on those stamps, provided that the excise stamps referred to in Article 125(4) are collected, and in case of failure to do so – provided that the amounts due specified in Article 125(4a) are paid.

10. The excise stamps collected according to the rules specified in paragraph (9) may be affixed to unit packets of manufactured tobacco or on manufactured tobacco before 1<sup>st</sup> January of the calendar year corresponding with the production year of the excise stamps printed on those stamps, whereby the exit of goods marked this way from the tax warehouse outside the excise duty suspension arrangement, import, or intra-Community acquisition may not take place before 1<sup>st</sup> January of the calendar year corresponding with the production year of the excise stamps printed on those stamps.

#### **Article 137 [Delegation of Legislative Powers to Determine Manner of Returning Excise Stamps]**

The minister competent for public finance shall determine with a regulation the manner of returning excise stamps, taking into account the need to provide for the protection of those excise stamps.

#### **Article 138 [Procedure for Loss, Damage, or Destruction in Process of Marking with Excise Stamps]**

1. <sup>364</sup> In case of losses of excise stamps due to their loss, damage, or destruction in the process of marking excise goods with those stamps, within the acceptable level of losses, a tax warehouse keeper, the owner of excise goods specified in Article 13(3), the entity referred to in Article 116(1)(7), if the marking is carried out in a tax warehouse within the territory of the country, and an entity effecting the production referred to in Article 47(1)(1), (2), (4) and (5), shall be entitled to the refund of the paid amounts constituting the value of the tax excise stamps, or to receive new excise stamps, as the case may be.

2. Excise stamps damaged or destroyed in the process of marking shall be returned to the entity which issued them, or destroyed under the supervision of the competent director of customs office.

3. The paid amounts constituting the value of tax excise stamps may be returned, or new excise stamps may be received instead, provided that a report is submitted which confirms:

1) the loss, damage, or destruction of the excise stamps, and

2) the return of the damaged or destroyed excise stamps, or the destruction of the damaged or destructed excise stamps.

4. For the excise stamps lost, damaged, or destructed in the process of marking excise goods, excise stamps shall be issued which correspond with the lost, damaged, or destructed excise stamps in terms of type and series.

5. The minister competent for public finance shall determine with a regulation:

- 1) the levels of acceptable losses of excise stamps arisen during the process of marking excise goods with regard to the total number of excise stamps used during a calendar month to mark excise goods,
  - 2) the set of activities which constitute the process of marking excise goods with excise stamps
- taking into account the need to control the proper use of excise stamps by the entities obliged to mark excise goods with excise stamps.

## **SECTION VIa**

### **<sup>365</sup> Records and Other Documentations**

#### **Article 138a. [Records of Excise Goods and Records of Goods Other than Excise Goods]**

1. A tax warehouse keeper shall keep records of excise goods.
2. A logistics operator operating a tax warehouse, apart from the records referred to in paragraph (1), shall keep records of goods other than excise goods not being the equipment of the tax warehouse.
3. The records referred to in paragraph (1) should allow in particular for:
  - 1) determination of the quantity, nature, and place of storage in the tax warehouse of excise goods:
    - a) under the excise duty suspension arrangement,
    - b) outside the excise duty suspension arrangement, including:
      - goods exempt from excise duty, including those exempt due to their intended use,
      - goods taxed with zero rate of excise duty due to their intended use referred to in Article 89;
  - 2) determination of the quantity and nature of goods on which excise duty was paid;
  - 3) determination of the quantity and nature of the energy products stored in one container:
    - a) under the excise duty suspension arrangement,
    - b) on which excise duty was paid,
    - c) exempt from excise duty due to their intended use,
    - d) taxed with zero rate of excise duty due to their intended use referred to in Article 89;
  - 4) distinguishing of the excise duty amount which is suspended due to the application of the excise duty suspension arrangement, and of the excise duty amount which would be payable, if the goods were not exempted from excise duty;
  - 5) determination of the quantity of excise goods entered to the tax warehouse and produced in the tax warehouse;

6) determination of the quantity of dispatched or received excise goods exempt from excise duty due to their intended use, the date of dispatch or receipt of those goods, and the place of receipt in the case of their movement, and information on the documents of supply;

7) determination of the owner of the excise goods other than the tax warehouse keeper, and whether that owner holds the concession required pursuant to the provisions of the Act of 10<sup>th</sup> April 1997 – the Energy Law or the entry to the register of the system of intervention reserves referred to in the Act of 16<sup>th</sup> February 2007 on Reserves of Oil, Petroleum Products, and Natural Gas, and Procedures in Situations of Risk to Fuel Safety of State and Oil Market Distortions.

4. The records referred to in paragraph (2) should allow for determination of the quantity and nature of the goods other than excise goods not being the equipment of the tax warehouse stored in the tax warehouse.

**Article 138b. [Records of Excise Goods Dispatched under Excise Duty Suspension Arrangement from Place of Import]**

1. A registered consignor shall keep records of excise goods dispatched under the excise duty suspension arrangement from the place of importation.

2. The records referred to in paragraph (1) shall allow in particular for determination of the quantity and nature of excise goods dispatched under the excise duty suspension arrangement by the registered consignor, and determination of the amount of excise duty suspended due to the application of the excise duty suspension arrangement, and the entity to which the excise goods are dispatched.

**Article 138c. [Records of Excise Goods Acquired within Intra-Community Acquisition]**

1. Records of excise goods acquired within intra-Community acquisition shall be kept by:

1) a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee;

2) a taxpayer making intra-Community acquisition of the excise goods specified in Annex No. 2 hereto which are outside the excise duty suspension arrangement for the needs of economic activity conducted within the territory of the country;

3) a taxpayer making intra-Community acquisition of excise goods not specified in Annex No. 2 hereto which within the territory of the country are taxed with excise duty rate other than zero rate.

2. A tax representative shall keep records of excise goods acquired within intra-Community acquisition and supplied within the territory of the country by the seller whom they represent.

3. The records referred to in paragraphs (1) and (2) should allow in particular for:

- 1) determination of the quantity and nature of the excise goods acquired within intra-Community acquisition;
- 2) determination of the excise duty amounts;
- 3) determination of the entity which dispatched the excise goods, and the entity for which the excise goods were acquired within intra-Community acquisition;
- 4) determination whether the entity for which the excise goods were acquired within intra-Community acquisition holds the concession required pursuant to the provisions of the Act of 10<sup>th</sup> April 1997 – the Energy Law or the entry to the register of the system of intervention reserves referred to in the Act of 16<sup>th</sup> February 2007 on Reserves of Oil, Petroleum Products, and Natural Gas, and Procedures in Situations of Risk to Fuel Safety of State and Oil Market Distortions.

**Article 138d. [Books of Control of Production, Turnover, and Consumption of Ethyl Alcohol]**

1. The following entities shall be obliged to keep books of control of production, turnover, and consumption of ethyl alcohol:

- 1) a tax warehouse keeper;
- 2) an entity producing ethyl alcohol outside a tax warehouse under Article 47(1)(1) and (4)-(5);
- 3) a consuming entity.

2. The books of control referred to in paragraph (1) should allow in particular for:

- 1) determination of the quantity of ethyl alcohol produced, processed, converted into vinegar, stored in a storehouse, purified, denatured, rectified, dehydrated, bottled to unit packets, and destroyed;
- 2) determination of the excise duty amounts;
- 3) determination of the place and date of production of the ethyl alcohol, its processing, conversion into vinegar, turnover of it in a storehouse, its purification, denaturation, rectification, dehydration, bottling to unit packets, and destruction.

**Article 138e. [Records of Commercial Documents Accompanying Movement of Excise Goods]**

1. A tax warehouse keeper and a registered consignor shall keep records of commercial documents accompanying the movement of excise goods other than those specified in Annex No. 2 hereto taxed with excise duty rate other than zero rate.

2. The records referred to in paragraph (1) should include the data of the commercial documents, in particular with regard to the entities and excise goods to which those documents apply.

#### **Article 138f. [Records of Excise Goods Exempt from Excise Duty]**

1. Records of excise goods exempt from excise duty due to their intended use shall be kept by:

- 1) a registered consignee, except for a registered consignee that has been granted an authorisation for a single acquisition of excise goods as registered consignee;
- 2) an intermediary entity,
- 3) a consuming entity conducting economic activity with the use of excise goods exempt from excise duty due to their intended use, except for a consuming entity which consumes other gas hydrocarbons falling within CN code from 2711 12 11 to 2711 19 00 exclusively for heating purposes.

2. The records referred to in paragraph (1) should allow in particular for determination of the quantity and nature of dispatched or received excise goods exempt from excise duty due to their intended use, the date of dispatch or receipt of those goods, and the place of receipt in the case of their movement, and for acquisition of information on the documents of supply.

#### **Article 138g. [Records of Raw Tobacco]**

1. Records of raw tobacco shall be kept by:

- 1) an intermediary tobacco entity;
- 2) a person authorised in the branch to represent the foreign entrepreneur, if the intermediary tobacco entity is a foreign entrepreneur referred to in Article 20d(1)(b);
- 3) an entity representing the foreign entrepreneur referred to in Article 20c, if the intermediary tobacco entity is a foreign entrepreneur referred to in Article 20d(1)(c).

2. The records referred to in paragraph (1) should allow in particular for:

- 1) determination of the quantity of the raw tobacco:
  - a) acquired within the territory of the country,
  - b) acquired within intra-Community acquisition,
  - c) imported,
  - d) sold within the territory of the country,
  - e) supplied within intra-Community supply,
  - f) exported,
  - g) consumed by an intermediary tobacco entity,
  - h) destroyed;
- 2) determination of:
  - a) the entity from which the raw tobacco was acquired or imported,
  - b) the entity to which the raw tobacco was sold,

- c) the entity to which the raw tobacco was supplied within intra-Community supply or exported;
- 3) determination of the quantity and processing manner of the raw tobacco, if the intermediary tobacco entity processes the raw tobacco.

#### **Article 138h. [Records of Quantity of Electricity]**

##### **1. Records of quantity of electricity shall be kept by:**

- 1) a taxpayer selling electricity to an end consumer;
- 2) a taxpayer consuming electricity in the case referred to in Article 9(1)(3) and (4);
- 3) a representing entity referred to in Article 13(5);
- 4) an entity making intra-Community supply or export of electricity.

2. The provisions of paragraph (1) shall not apply to entities generating electricity from generating units of the total capacity not exceeding 1 MW which is not supplied to installations connected and cooperating with each other used for transmission of that electricity, but is consumed by that entity, provided that excise duty at the amount due was paid on energy products used to generate that electricity.

3. Entities specified in paragraphs (1)(1)-(3) shall keep the records referred to in paragraph (1) based on the indications of the devices for measurement and accounts located at the end consumer or the entity consuming the electricity, and in case of the lack of such devices – based on the level of electricity consumption by the particular devices determined with a coefficient, and stated in the documentation kept by the taxpayer.

4. The entity specified in paragraph (1)(4) shall keep the records referred to in paragraph (1) based on the indications of the devices for measurement and accounts, and if there is no such possibility – based on the account documents.

5. The records referred to in paragraph (1) should include the data necessary to determine in monthly periods, with the accuracy of 0.001 MWh, the total quantity of:

- 1) the electricity produced, acquired within intra-Community acquisition, imported, or purchased within the territory of the country;
- 2) the electricity sold to end consumers within the territory of the country;
- 3) the electricity sold to entities holding a concession within the meaning of the provisions of the Act of 10<sup>th</sup> April 1997 – the Energy Law;
- 4) the electricity supplied within intra-Community supply and exported;
- 5) the electricity consumed for own needs;
- 6) the electricity exempt from excise duty under Article 30(6), (7), and (7a), and the provision issued under Article 39(1)(2);
- 7) the losses of electricity not subject to taxation referred to in Article 9(2).

6. In case of the lack of the measurement devices allowing for precise determination of the quantities referred to in paragraphs (5)(5) and (7), the records keeper shall estimate the quantities.

#### **Article 138i. [Records of Coal Products]**

1. Records of coal products shall be kept by:

- 1) an intermediary coal entity selling coal products within the territory of the country to a coal end consumer;
- 2) an intermediary coal entity consuming coal products.

2. Records kept by the intermediary coal entity referred to in paragraph (1)(1) should include the following data:

- 1) the quantity of the coal products sold each time to a coal end consumer within the territory of the country, specified in kilograms, according to the name and the CN code;
- 2) the date of the sale of the coal products and the date of their supply to the coal end consumer;
- 3) the given name and surname or business name and the place of residence of the address of the seat of the coal end consumer;
- 4) the date of issue of the document of supply or another document replacing the document of supply, and the identification number of the document of supply or another document replacing the document of supply based on which those products were sold within the territory of the country to the coal end consumer.

3. Records kept by the intermediary coal entity referred to in paragraph (1)(2) should include the data of the coal products:

- 1) used under the exemptions referred to in Article 31a(1), or
- 2) used for the purposes not subject to exemption
  - by months, in kilograms, according to the name and CN code.

#### **Article 138j. [Records of Gas Products]**

1. Records of gas products shall be kept by:

- 1) an intermediary gas entity selling gas products within the territory of the country to a gas end consumer;
- 2) an intermediary gas entity consuming gas products.

2. Records kept by the intermediary gas entity referred to in paragraph (1)(1) should include the following data:



- 1) the quantity of the gas products sold each time to a gas end consumer within the territory of the country, specified in kilograms or cubic metres, as the case may be, according to the name and the CN codes, and their calorific value;
  - 2) the date of the sale of the gas products;
  - 3) the given name and surname or business name and the place of residence or the address of the seat of the gas end consumer;
  - 4) the date of issue and number of the invoice or another document from which the payment of amounts due for the gas products sold by the taxpayer results based on which those products were sold within the territory of the country to the gas end consumer.
3. If the sale of gas products is documented only with a sale receipt, the records kept by the intermediary gas entity referred to in paragraph (1)(1) should include the data referred to in paragraphs (2)(1)(2) and (4).
4. Records kept by the intermediary gas entity referred to in paragraph (1)(2) should include the following data:
- 1) the quantity of gas products, according to the activities performed:
    - a) used under the exemptions referred to in Article 31b(1), (2) or (3), or
    - b) used for the purposes not subject to exemption, or
    - c) produced, or
    - d) acquired within intra-Community acquisition, or
    - e) supplied within intra-Community supply, or
    - f) imported, or
    - g) exported, or
    - h) acquired within the territory of the country, or
    - i) sold within the territory of the country

– by months of performing the activity, specified in kilograms or cubic metres, as the case may be, according to the name and the CN codes, and their calorific value;
  - 2) the date and place of performing the activity;
  - 3) in the cases referred to in sub-paragraphs (1)(d)-(i), the data of business partners with whom the activity was performed.
5. The records referred to in paragraph (1) shall be kept based on the indications of the devices for measurement and accounts, and in case of the lack of such devices – based on the level of gas products consumption by the particular devices determined with a co-efficient, and stated in the documentation kept by the taxpayer.

**Article 138k. [Records of Excise Goods to which Exemption Applies]**

Records of the nature, quantity and values of the excise goods referred to in Article 118(1)(1)-(3) and (6) shall be kept by:

- 1) a tax warehouse keeper;

- 2) an importer of the excise goods;
- 3) an entity making intra-Community acquisition of the excise goods;
- 4) an entity producing the excise goods, pursuant to Article 47(1)(1), (2), (4) or (5);
- 5) the owner of excise goods referred to in Article 13(3).

#### **Article 138l. [Records of Excise Stamps]**

##### **1. Records of excise stamps shall be kept by:**

- 1) an entity obliged to mark excise goods with excise stamps;
- 2) a tax warehouse keeper within the territory of the country to which the owner of excise goods referred to in Article 13(3), or the entity referred to in Article 116(1)(7) provided excise stamps to affix them to the unit packets of excise goods or to the excise goods which belong to them.

2. The records referred to in paragraph (1) should allow in particular for determination of the number of the excise stamps received, issued, used to be affixed, damaged, destroyed, lost, or returned.

#### **Article 138m. [Reports]**

##### **1. The following reports shall be drafted:**

- 1) of the destruction of the following goods unsuitable for consumption, further processing, or consumption, which are subject to control:
  - a) raw tobacco,
  - b) excise goods other than raw tobacco;
- 2) of the loss, destruction, damage, exit, destruction of damaged or destroyed excise stamps, and issue or return of excise stamps;
- 3) of determination of the quantity of ethyl alcohol during the supply thereof from the distillery;
- 4) of denaturation of ethyl alcohol.

2. The reports referred to in paragraph (1) shall be drafted in paper.

3. The reports referred to in paragraph (1)(1) shall be drafted at least in two copies. One copy of the report shall be sent immediately to the director of customs office competent for excise duty, except for the cases in which a representative of the competent tax authority participated in the activities confirmed by the report.

4. The reports referred to in paragraph (1)(2) shall be drafted at least in three copies. A copy of the report shall be sent immediately to the director of customs office competent for excise duty and the director of customs office competent for excise stamps, except for the cases in

which a representative of the competent tax authority participated in the activities confirmed by the report.

5. The reports referred to in paragraph (1)(3) and (4) shall be drafted in two copies, and if the denatured ethyl alcohol is to be dispatched to another entity, the report shall be drafted in three copies. One copy of the report shall be provided to the director of customs office competent for excise duty, and in the case of a control carried out as a permanent control within the meaning of Article 30(6) of the Act of 27<sup>th</sup> August 2009 on Customs Service – the organisational unit established by the director of customs office within the premises of the entity subject to the control under Article 30(6) of the said statute, except for the cases in which a representative of the competent tax authority participated in the activities confirmed by the report.

6. The reports should allow in particular to determine the following, as the case may be:

- 1) the date of destruction and the quantity and nature of the destructed excise goods;
- 2) the date of destruction, loss, damage, exit, issue, or return of excise stamps, and the quantity and nature of the destructed, lost, damaged, removed, issued, or returned excise stamps;
- 3) the manner of destruction of excise goods;
- 4) the reserve of the ethyl alcohol in the storehouse of the distillery before its supply and after its supply, and the quantity of ethyl alcohol in the transport containers;
- 5) the quantity of ethyl alcohol taken for denaturation, the nature and quantity of the denaturant or the denaturing substance added, and the quantity of the denatured ethyl alcohol obtained.

#### **Article 138n. [List of Goods Re-Marked with Excise Stamps]**

If the planned marking of excise goods with excise stamps is made due to the destruction of excise stamps on those goods, improper marking of those goods or marking them with improper excise stamps, and due to the occurrence of excise goods not marked with excise stamps in circulation, the entity shall draft a list of those goods and provide it to the competent director of customs office within 3 days of the date of detecting those circumstances, or of the date of their occurrence, for its approval.

#### **Article 138o. [Documentation of Activities by Production of Beer and Wine]**

Entities conducting economic activity involving production of beer or wine shall be obliged to keep documentation containing information on the production activities with regard to those products.

#### **Article 138p. [Form of Records]**

1. The records and other documentations referred to in Article 138a-138l and Article 138o shall be kept in paper or electronically.
2. The records referred to in Article 138a-138c and Article 138e-138l may be replaced with the documentation kept under the provisions of the tax law other than the provisions on excise duty, or under the provisions on accounting, provided that documentation contains all the data required for the given records.

#### **Article 138q. [Storage of Records and Documents]**

1. The records and other documentations referred to in Article 138a-138o should be stored for the purposes of control for a period of 5 years, counting from the end of the calendar year in which they are drafted.
2. Invoices and other documents from which the payment of amounts due for the gas products sold by the taxpayer referred to in Article 138j(2)(4) results should be stored for the purposes of control for a period of 5 years, counting from the end of the calendar year in which they are issued.

#### **Article 138r. [List of Documents of Supply Issued]**

1. An entity which issues a document of supply shall draft a quarterly list of documents of supply issued. One copy of such a list shall be provided to the competent director of customs office until the 25th day of the month following the quarter to which the list applies.
2. The list referred to in paragraph (1) should include the date of drafting, the business name or the given name and surname and the address of the seat or place of residence of the entity drafting the list, the specification of documents of supply issued including the date of issue of a document of supply, and in the case of the excise goods referred to in Article 32 and in the cases set out in the implementing legislation issued under Article 38(1) and Article 38(2)(1) or Article 39(1), also the business name or the given name and surname and the address of the seat or place of residence of the recipient of the exempted goods, the CN code, and the quantity of the exempted goods entered to the document of supply.
3. The entries to the list referred to in paragraph (1) shall be made chronologically, in a permanent and durable manner, immediately following the issue of the document of supply. The copies of the list shall be numbered subsequently from number one and the seal of the entity drafting the list shall be affixed thereto. Any corrections should be made in such a manner that the original text crossed out remains legible. Any corrections should be confirmed with the signature of the person making the correction, with the date of making the correction.
4. The list referred to in paragraph (1) may be drafted and provided to the director of customs office referred to in paragraph (1) electronically, in the manner agreed upon with that director of customs office.
5. The provisions of paragraphs (1)-(4) shall apply accordingly, if the document of supply is an invoice.

**Article 138s. [Delegation of Legislative Powers – Templates and Content of Records, Types of Documentation and Books of Control]**

The minister competent for public finance shall determine with a regulation:

- 1) the detailed scope of data to be included in the records referred to in Article 138a(1), 138b, 138c, 138e-138g and 138l, and reports referred to in Article 138m(1),
  - 2) the manner to keep the records referred to in Article 138a(1), 138b, 138c, 138e, 138f and 138h-138l,
  - 3) the templates of the records referred to in Article 138l and templates of the reports referred to in Article 138m(1)(2)-(4),
  - 4) the types of the books of control referred to in Article 138d(1), the detailed scope of data to be included in those books, the templates of those books, and the manner to keep those books,
  - 5) the types of the documentation referred to in Article 138o, the detailed scope of data to be included in that documentation, the templates thereof, and the manner to keep that documentation
- taking into consideration the need to provide for a proper supervision over excise goods and excise stamps issued, the proper collection of excise duty on excise goods, and the functioning of exemptions from excise duty.

### **Chapter 3**

#### **Final Provisions**

**Article 168 [Derogation Provision]**

The Act of 23<sup>rd</sup> January 2004 on Excise Duty (Journal of Laws No. 29, item 257, as amended) shall expire.

**Article 169 [Entry into Force]**

This Act shall enter into force as of 1<sup>st</sup> March 2009.

## ZAŁĄCZNIKI

### ZAŁĄCZNIK Nr 1

#### WYKAZ WYROBÓW AKCYZOWYCH

Poz.	Kod CN	Nazwa wyrobu (grupy wyrobów)
1	2	3
1	ex 1507	Olej sojowy i jego frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
2	ex 1508	Olej z orzeszków ziemnych i jego frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
3	ex 1509	Oliwa i jej frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
4	ex 1510 00	Pozostałe oleje i ich frakcje, otrzymywane wyłącznie z oliwek, nawet rafinowane, ale niemodyfikowane chemicznie, włącznie z mieszaninami tych olejów lub ich frakcji z olejami lub frakcjami objętymi pozycją 1509 - jeżeli są przeznaczone do celów opałowych lub napędowych
5	ex 1511	Olej palmowy i jego frakcje, nawet rafinowany, ale niemodyfikowany chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
6	ex 1512	Olej z nasion słonecznika, z krokosza balwierskiego lub z nasion bawełny i ich frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
7	ex 1513	Olej kokosowy (z kopry), olej z ziaren palmowych lub olej babassu i ich frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
8	ex 1514	Olej rzepakowy, rzepikowy lub gorczycowy oraz ich frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
9	ex 1515	Pozostałe ciekłe tłuszcze i oleje roślinne (włącznie z olejem jojoba) i ich frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
10	ex 1516	Tłuszcze i oleje, zwierzęce lub roślinne i ich frakcje, częściowo lub całkowicie uwodornione, estryfikowane wewnątrz, reestryfikowane lub elaidynizowane, nawet

		rafinowane, ale dalej nieprzetworzone - jeżeli są przeznaczone do celów opałowych lub napędowych
11	ex 1517	Margaryna; jadalne mieszaniny lub produkty z tłuszczów lub olejów, zwierzęcych lub roślinnych, lub z frakcji różnych tłuszczów lub olejów, z działu 15 Nomenklatury Scalonej, inne niż jadalne tłuszcze lub oleje lub ich frakcje, objęte pozycją 1516 - jeżeli są przeznaczone do celów opałowych lub napędowych
12	ex 1518 00	Tłuszcze i oleje, zwierzęce lub roślinne i ich frakcje, gotowane, utlenione, odwodnione, siarkowane, napowietrzane, polimeryzowane przez ogrzewanie w próżni lub w gazie obojętnym, lub inaczej modyfikowane chemicznie, z wyłączeniem objętych pozycją 1516; niejadalne mieszaniny lub produkty z tłuszczów lub olejów, zwierzęcych lub roślinnych, lub z frakcji różnych tłuszczów lub olejów z działu 15 Nomenklatury Scalonej, gdzie indziej niewymienione ani niewłączone - jeżeli są przeznaczone do celów opałowych lub napędowych
13	2203 00	Piwo otrzymywane ze słodu
14	2204	Wino ze świeżych winogron, włącznie z winami wzmocnionymi; moszcz gronowy, inny niż ten objęty pozycją 2009
15	2205	Wermut i pozostałe wina ze świeżych winogron aromatyzowane roślinami lub substancjami aromatycznymi
16	2206 00	Pozostałe napoje fermentowane (na przykład cydr (cidr), perry i miód pitny); mieszanki napojów fermentowanych oraz mieszanki napojów fermentowanych i napojów bezalkoholowych, gdzie indziej niewymienione ani niewłączone
17	2207	Alkohol etylowy nieskażony o objętościowej mocy alkoholu 80% obj. lub większej; alkohol etylowy i pozostałe wyroby alkoholowe, o dowolnej mocy, skażone
18	2208	Alkohol etylowy nieskażony o objętościowej mocy alkoholu mniejszej niż 80% obj.; wódki, likiery i pozostałe napoje spirytusowe
19	ex 2701	Węgiel; brykiety, brykietki i podobne paliwa stałe wytwarzane z węgla - jeżeli są przeznaczone do celów opałowych
20	ex 2702	Węgiel brunatny (lignit), nawet aglomerowany, z wyłączeniem gagatu - jeżeli jest przeznaczony do celów opałowych
21	ex 2704 00	Koks i półkoks, z węgla, węgla brunatnego (lignitu) lub torfu, nawet aglomerowany; węgiel retortowy - jeżeli są

		przeznaczone do celów opałowych
22	2705 00 00	Gaz węglowy, gaz wodny, gaz generatorowy i podobne gazy, inne niż gaz ziemny (mokry) i pozostałe węglowodory gazowe
23	2706 00 00	Smoła destylowana z węgla, z węgla brunatnego (lignitu) lub z torfu oraz pozostałe smoły mineralne, nawet odwodnione lub częściowo destylowane, włącznie ze smołami odzyskanymi
24	2707	Oleje i pozostałe produkty destylacji wysokotemperaturowej smoły węglowej; podobne produkty, w których masa składników aromatycznych jest większa niż składników niearomatycznych
25	2708	Pak i koks pakowy, otrzymywane ze smoły węglowej lub z pozostałych smół mineralnych
26	2709 00	Oleje ropy naftowej i oleje otrzymywane z minerałów bitumicznych, surowe
27	2710	Oleje ropy naftowej i oleje otrzymywane z minerałów bitumicznych, inne niż surowe; preparaty gdzie indziej niewymienione ani niewłączone, zawierające 70% masy lub więcej olejów ropy naftowej lub olejów otrzymywanych z minerałów bitumicznych, których te oleje stanowią składniki zasadnicze preparatów; oleje odpadowe
28	2711	Gaz ziemny (mokry) i pozostałe węglowodory gazowe
29	2712	Wazelina; parafina, воск mikrokrystaliczny, gacz parafinowy, ozokerit, воск montanowy, воск torfowy, pozostałe woski mineralne i podobne produkty otrzymywane w drodze syntezy lub innych procesów, nawet barwione
30	2713	Koks naftowy, bitum naftowy oraz inne pozostałości olejów ropy naftowej lub olejów otrzymywanych z minerałów bitumicznych
31	2714	Bitum i asfalt, naturalne; łupek bitumiczny lub naftowy i piaski bitumiczne; asfaltyty i skały asfaltowe
32	2715 00 00	Mieszanki bitumiczne na bazie naturalnego asfaltu, naturalnego bitumu, bitumu naftowego, smoły mineralnej lub na mineralnego paku smołowego (na przykład masy uszczelniające bitumiczne, fluksy)
33	2716 00 00	Energia elektryczna
34	2901	Węglowodory alifatyczne
35	2902	Węglowodory cykliczne
36	ex 2905 11 00	Metanol (alkohol metylowy) - niebędący pochodzenia syntetycznego - jeżeli jest przeznaczony do celów opałowych lub napędowych
37	3403	Preparaty smarowe (włącznie z cieczami chłodząco-



		smarującymi, preparatami do rozluźniania śrub i nakrętek, preparatami przeciwrzutowymi i antykorozyjnymi, preparatami zapobiegającymi przyleganiu do formy opartymi na smarach) oraz preparaty w rodzaju stosowanych do natłuszczania materiałów włókienniczych, skóry wyprawionej, skór futerkowych lub pozostałych materiałów, z wyłączeniem preparatów zawierających, jako składnik zasadniczy, 70% masy lub więcej olejów ropy naftowej lub olejów otrzymanych z minerałów bitumicznych
38	3811	Środki przeciwstukowe, inhibitory utleniania, inhibitory tworzenia się żywicy, dodatki zwiększające lepkość, preparaty antykorozyjne oraz pozostałe preparaty dodawane do olejów mineralnych (włącznie z benzyną) lub do innych cieczy, stosowanych do tych samych celów, co oleje mineralne
39	3817 00	Mieszane alkilobenzeny i mieszane alkilonaftaleny, inne niż te objęte pozycją 2707 lub 2902
40	ex 3824 90 91	Monoalkilowe estry kwasów tłuszczowych, zawierające objętościowo 96,5% lub więcej estrów (FAMAE) - jeżeli są przeznaczone do celów opałowych lub napędowych
41	ex 3824 90 97	Pozostałe produkty chemiczne i preparaty przemysłu chemicznego lub przemysłów pokrewnych (włączając te składające się z mieszanin produktów naturalnych), gdzie indziej niewymienione ani niewłączone - jeżeli są przeznaczone do celów opałowych lub napędowych
42	bez względu na kod CN	Papierosy, tytoń do palenia, cygara i cygaretki
43	bez względu na kod CN wyrobu zawierającego alkohol etylowy	Alkohol etylowy zawarty w wyrobach niebędących wyrobami akcyzowymi o rzeczywistej objętościowej mocy alkoholu przekraczającej 1,2% obj.
44	bez względu na kod CN	Pozostałe wyroby przeznaczone do użycia, oferowane na sprzedaż lub używane jako paliwa silnikowe lub paliwa opałowe albo jako dodatki lub domieszki do paliw silnikowych lub paliw opałowych.
45	bez względu na kod CN	Susz tytoniowy

Objaśnienia:

ex - dotyczy tylko danego wyrobu z danej pozycji lub kodu.

## ZAŁĄCZNIK Nr 2

### WYKAZ WYROBÓW AKCYZOWYCH, DO KTÓRYCH STOSUJE SIĘ PROCEDURĘ ZAWIESZENIA POBORU AKCYZY I KTÓRYCH PRODUKCJA ODBYWA SIĘ W SKŁADZIE PODATKOWYM, O KTÓRYCH MOWA W DYREKTYWIE RADY 92/12/EWG

Poz.	Kod CN	Nazwa wyrobu (grupy wyrobów)
1	2	3
1	ex 1507	Olej sojowy i jego frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
2	ex 1508	Olej z orzeszków ziemnych i jego frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
3	ex 1509	Oliwa i jej frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
4	ex 1510 00	Pozostałe oleje i ich frakcje, otrzymywane wyłącznie z oliwek, nawet rafinowane, ale niemodyfikowane chemicznie, włącznie z mieszaninami tych olejów lub ich frakcji z olejami lub frakcjami objętymi pozycją 1509 - jeżeli są przeznaczone do celów opałowych lub napędowych
5	ex 1511	Olej palmowy i jego frakcje, nawet rafinowany, ale niemodyfikowany chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
6	ex 1512	Olej z nasion słonecznika, z krokosza balwierskiego lub z nasion bawełny i ich frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
7	ex 1513	Olej kokosowy (z kopry), olej z ziaren palmowych lub olej babassu i ich frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
8	ex 1514	Olej rzepakowy, rzepikowy lub gorczycowy oraz ich frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
9	ex 1515	Pozostałe ciekłe tłuszcze i oleje roślinne (włącznie z olejem jojoba) i ich frakcje, nawet rafinowane, ale niemodyfikowane chemicznie - jeżeli są przeznaczone do celów opałowych lub napędowych
10	ex 1516	Tłuszcze i oleje, zwierzęce lub roślinne i ich frakcje, częściowo lub całkowicie uwodornione, estryfikowane wewnętrznie, reestryfikowane lub elaidynizowane, nawet rafinowane, ale dalej

		nieprzetworzone - jeżeli są przeznaczone do celów opałowych lub napędowych
11	ex 1517	Margaryna; jadalne mieszaniny lub produkty z tłuszczów lub olejów, zwierzęcych lub roślinnych, lub z frakcji różnych tłuszczów lub olejów, z działu 15 Nomenklatury Scalonej, inne niż jadalne tłuszcze lub oleje lub ich frakcje, objęte pozycją 1516 - jeżeli są przeznaczone do celów opałowych lub napędowych
12	ex 1518 00	Tłuszcze i oleje, zwierzęce lub roślinne i ich frakcje, gotowane, utlenione, odwodnione, siarkowane, napowietrzane, polimeryzowane przez ogrzewanie w próżni lub w gazie obojętnym, lub inaczej modyfikowane chemicznie, z wyłączeniem objętych pozycją 1516; niejadalne mieszaniny lub produkty z tłuszczów lub olejów, zwierzęcych lub roślinnych, lub z frakcji różnych tłuszczów lub olejów z działu 15 Nomenklatury Scalonej, gdzie indziej niewymienione ani niewłączone - jeżeli są przeznaczone do celów opałowych lub napędowych
13	2203 00	Piwo otrzymywane ze słodu
14	2204	Wino ze świeżych winogron, włącznie z winami wzmocnionymi; moszcz gronowy, inny niż ten objęty pozycją 2009
15	2205	Wermut i pozostałe wina ze świeżych winogron aromatyzowane roślinami lub substancjami aromatycznymi
16	2206 00	Pozostałe napoje fermentowane (na przykład cydr (cidr), perry i miód pitny) mieszanki napojów fermentowanych oraz mieszanki napojów fermentowanych i napojów bezalkoholowych, gdzie indziej niewymienione ani niewłączone
17	2207	Alkohol etylowy nieskażony o objętościowej mocy alkoholu 80% obj. lub większej; alkohol etylowy i pozostałe wyroby alkoholowe, o dowolnej mocy, skażone
18	2208	Alkohol etylowy nieskażony o objętościowej mocy alkoholu mniejszej niż 80% obj.; wódki, likiery i pozostałe napoje spirytusowe
19	ex 2707 2707 10 2707 20 2707 30 2707 50	Oleje i pozostałe produkty destylacji wysokotemperaturowej smoły węglowej; podobne produkty, w których masa składników aromatycznych jest większa niż składników niearomatycznych, wyłącznie: 1) Benzol (benzen) 2) Toluol (toluen) 3) Ksylol (ksyleny) 4) Pozostałe mieszaniny węglowodorów aromatycznych, z

		których 65% lub więcej objętościowo (włącznie ze stratami) destyluje w 250°C zgodnie z metodą ASTM D 86
20	od ex 2710 11 do ex 2710 19 69	Oleje ropy naftowej i oleje otrzymywane z minerałów bitumicznych, inne niż surowe; preparaty gdzie indziej niewymienione ani niewłączone, zawierające 70% masy lub więcej olejów ropy naftowej lub olejów otrzymywanych z minerałów bitumicznych, których te oleje stanowią składniki zasadnicze preparatów
21	ex 2711	Gaz ziemny (mokry) i pozostałe węglowodory gazowe, z wyłączeniem objętych pozycjami 2711 11 00, 2711 21 00 oraz 2711 29 00
22	2901 10 00	Węglowodory alifatyczne nasycone
23	ex 2902 2902 20 00 2902 30 00 2902 41 00 2902 42 00 2902 43 00 2902 44 00	Węglowodory cykliczne, wyłącznie: 1) Benzen 2) Toluen 3) o-Ksylen 4) m-Ksylen 5) p-Ksylen 6) Mieszaniny izomerów ksylenu
24	ex 2905 11 00	Metanol (alkohol metylowy) - niebędący pochodzenia syntetycznego - jeżeli jest przeznaczony do celów opałowych lub napędowych
24a	ex 3811 3811 11 10 3811 11 90 3811 19 00 3811 90 00	Środki przeciwstukowe, inhibitory utleniania, inhibitory tworzenia się żywic, dodatki zwiększające lepkość, preparaty antykorozyjne oraz pozostałe preparaty dodawane do olejów mineralnych (włącznie z benzyną) lub do innych cieczy, stosowanych do tych samych celów, co oleje mineralne, wyłącznie: 1) Środki przeciwstukowe, na bazie tetraetyloolowiu 2) Pozostałe środki przeciwstukowe, na bazie związków ołowiu 3) Pozostałe środki przeciwstukowe 4) Pozostałe
25	ex 3824 90 91	Monoalkilowe estry kwasów tłuszczowych, zawierające objętościowo 96,5% lub więcej estrów (FAMAE) - jeżeli są przeznaczone do celów opałowych lub napędowych
26	ex 3824 90 97	Pozostałe produkty chemiczne i preparaty przemysłu chemicznego lub przemysłów pokrewnych (włączając te, składające się z mieszanin produktów naturalnych), gdzie indziej niewymienione ani niewłączone - jeżeli są przeznaczone do celów opałowych lub napędowych
27	bez względu na	Papierosy, tytoń do palenia, cygara i cygaretki

	kod CN	
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Objaśnienia:

ex - dotyczy tylko danego wyrobu z danej pozycji lub kodu.

### ZAŁĄCZNIK Nr 3

#### WYKAZ WYROBÓW AKCYZOWYCH OBJĘTYCH OBOWIĄZKIEM OZNACZANIA ZNAKAMI AKCYZY

Poz.	Kod CN	Nazwa wyrobu (grupy wyrobów)
1	2	3
1	2203 00	Piwo otrzymywane ze słodu
2	2204	Wino ze świeżych winogron, włącznie z winami wzmocnionymi; moszcz gronowy, inny niż ten objęty pozycją 2009
3	2205	Wermut i pozostałe wina ze świeżych winogron aromatyzowane roślinami lub substancjami aromatycznymi
4	2206 00	Pozostałe napoje fermentowane (na przykład cydr (cidr), perry i miód pitny); mieszanki napojów fermentowanych oraz mieszanki napojów fermentowanych i napojów bezalkoholowych, gdzie indziej niewymienione ani niewłączone
5	2207	Alkohol etylowy nieskażony o objętościowej mocy alkoholu 80% obj. lub większej; alkohol etylowy i pozostałe wyroby alkoholowe, o dowolnej mocy, skażone
6	2208	Alkohol etylowy nieskażony o objętościowej mocy alkoholu mniejszej niż 80% obj.; wódki, likiery i pozostałe napoje spirytusowe
7	2710	Oleje ropy naftowej i oleje otrzymywane z minerałów bitumicznych, inne niż surowe; preparaty gdzie indziej niewymienione ani niewłączone, zawierające 70% masy lub więcej olejów ropy naftowej lub olejów otrzymywanych z minerałów bitumicznych, których te oleje stanowią składniki zasadnicze preparatów; oleje odpadowe
8	2711	Gaz ziemny (mokry) i pozostałe węglowodory gazowe
9	3403	Preparaty smarowe (włącznie z cieczami chłodząco-smarującymi, preparatami do rozluźniania śrub i nakrętek, preparatami przeciwrzdzewnymi i antykorozyjnymi, preparatami zapobiegającymi przyleganiu do formy opartymi na smarach) oraz preparaty w rodzaju stosowanych do natłuszczania materiałów włókienniczych, skóry wyprawionej, skór futerkowych lub pozostałych materiałów, z wyłączeniem preparatów zawierających, jako składnik zasadniczy, 70% masy

		lub więcej olejów ropy naftowej lub olejów otrzymanych z minerałów bitumicznych
10	bez względu na kod CN	Papierosy, tytoń do palenia, cygara i cygaretki
11	bez względu na kod CN	Susz tytoniowy