

In State Gazette issue 95 dated 1 December 2009, the Amendments and Supplementations Act to the Excise Duties and Tax Warehouses Act (ASAEDTWA) was promulgated. We will try to present herein the more important changes in the legal provisions without enumerating them exhaustively.

The major amendments and supplementations to ASAEDTWA stem from the introduction, into the Excise Duties and Tax Warehouses Act, of principles and requirements of Council Directive 2008/118/EC dated 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.

1. Registered persons

In accordance with Directive 2008/118/EC, the amendments and supplementations of EDTWA introduce an obligation for registration of the following persons under EDTWA:

- **Registered consignor**

According to the legal definition provided for (Art. 4, para 29a of EDTWA), registered consignor means a person that imports excise goods and, under certain conditions, has the right to dispatch excise goods released for free circulation and at the same time placed under excise duty suspension arrangement, in another member state. A registered consignor is not allowed to store or to receive excise goods moving under duty suspension arrangements.

New Section III d comprising Art. 58c – 58h is created, which regulates the procedures for registration of persons.

The changes enter into force **as from 1 April 2010**.

- **Registered consignee and temporarily registered consignee**

Pursuant to §80 of the Additional Provisions of ASAEDTWA, as of 1 January 2010, the term “person – registered trader” is replaced by registered consignee, and “non-registered trader” – by temporarily registered consignee.

Under certain conditions the persons pointed above (registered consignee and temporarily registered consignee) may receive excise goods moving under duty suspension arrangements. Important limitations in the conditions under which a temporarily registered consignee may receive excises goods are introduced, namely: this may happen once only for certain amount of goods moving from another member state under excise duty suspension arrangements and within a two-month period (pursuant to a definition under Art. 4, item 29 of EDTWA).

New requirements and conditions under which a person may be registered as a registered consignee and temporarily registered consignee of excise goods are introduced by ASAEDTWA, for instance:

- For a registered consignee – the trader shall not be in insolvency or liquidation proceedings; shall use an automated reporting system, which shall permit exercising real-time control over excise goods received; shall not have any liquid and exigible customs and tax liabilities or obligations for statutory social security or health insurance contributions, etc.;
- For a temporarily registered consignee – the trader shall not be in insolvency or liquidation proceedings; shall not have any liquid and exigible customs and tax liabilities or obligations for statutory social security or health insurance contributions, etc.

The changes in EDTWA, which concern procedures for registration of the persons – registered consignee and temporarily registered consignee (Art. 57c and Art. 58a EDTWA) enter into force **as from 1 December 2009**. In addition, the application for registration as a registered consignee and temporarily registered consignee shall be filed with the respective Head of Customs as per the location of the establishment where the excise goods are received/unloaded. Up to now, the application was filed with the Customs as per the registered seat and address of management of the recipient of the excise goods.

In relation to the status quo cases – registered traders that have received their registration certificates before 1 December 2009 and will continue receiving excise goods, shall be subject to compulsory re-registration. More information on this issue is included in item 10 below.

2. Release for consumption of excise goods and occurrence of liability for payment excise duty

The provisions of Art. 20 EDTWA are supplemented by ASAEDTWA as new hypotheses are regulated related to the release for consumption of excise goods and liability for payment of the excise duty:

- In force as from **1 April 2010**, the liability for payment of excise duty shall arise also when excise goods dispatched by a registered consignor re-enter the territory of the country;
- Release for consumption and liability for payment of excise duty shall arise also in case of using in production, holding or disposing with excise goods, whose excise duty has not been paid or has been partly paid in violation of the law. The provision enters into force **as from 1 December 2009**;
- Liability for payment of excise duty shall occur in case excise goods are received by diplomatic and consular representatives and representatives of international organizations and members of their personnel, countries and parties to the North Atlantic Treaty. The provision enters into force **as from 1 December 2009**. The excise duty paid by the pointed persons shall be reimbursed under certain conditions;

- It has been repealed the liability for payment of excise duty when a 60-day period from receiving excise stickers expires and the excise duty has not become chargeable on other grounds.

3. Exemption from payment of excise duty and reimbursement of excise duty paid

By ASAEDTWA, Section II of Chapter Three of EDTWA related to the procedures for exemption from payment of excise duty and reimbursement of excise duty paid is supplemented. The changes enter into force **as from 1 December 2009**. The more important changes in the provision include:

- Art. 21 of EDTWA is supplemented with new para 6, according to which excise duty is not chargeable when destroying, under the supervision of the Customs authorities, excise goods produced outside a tax warehouse in case such production is related to testing of machines, equipment or installation;
- According to the supplementations of para 3 of Art. 24 of EDTWA, the exemption from charging of excise duty on energy products for vessels and aircrafts shall be applied if the fuels are marked, where the marking shall be made only in a tax warehouse under conditions and rules determined by the regulations on implementation of the act;
- The excise duty paid for unplaced, damaged or scrapped excise stickers shall be reimbursed within 30 days from the date of issuance, by the Customs authorities, of a protocol for the established authenticity of the excise stickers. The protocol for the established authenticity shall be issued not later than 60 days of submission of a claim for reimbursement of excise duty paid. A significant gap in the legal provision is filled by this change – the lack of a time limit for reimbursement by the Customs authorities of excise duty paid by the tax liable persons.

4. Excise duty rates

As from **1 December 2009** new excise duty rates and new goods subject to excise duty are introduced:

- **On heavy fuels for vessels – BGN 600 per 1000 kg;**
- **On lubricant oils** with CN code from 2710 19 71 to 2710 19 93 and other lubricants with CN code 2710 19 99 – **BGN 0 per 1000 litres**. This rate is applied in cases when the goods are packed in consumer packaging of up to 210 litres and are intend to be sold in the country and/or used in activities, which do not constitute production within the meaning of this act;

As from **1 January 2010** excise duty rates are changed, as follows:

- **On kerosene** – from BGN 565 per 1000 litres to **BGN 600 per 1000 litres;**

- **On gas oil with CN codes from 2710 19 41 to 2710 19 49** – BGN 50 per 1000 litres. The rate is applied only for marked gas oil for heating;
- **On heavy oils for heating with CN codes from 2710 19 61 to 2710 19 69, other heavy oils different from lubricant oils with CN code 2710 19 99 and for energy products with CN codes 2706, 2707 91, 2707 99 11, 2707 99 19, 2710 91 and 2710 99** – from BGN 30 per 1000 kg to **BGN 50 per 1000 kg**;
- **On electricity used by businesses** – from BGN 1.40 per 1 MWH to **BGN 2.00 per 1 MWH**;
- **On tobacco and tobacco products:**
 - **Tobacco for smoking** (for pipes and cigarettes) – **BGN 100 per kilogram** (until the change, the excise duty on tobacco for smoking was the sum of the specific and proportional excises duty);
 - **Cigarettes:**
 - **Specific excise duty** – from BGN 41 per 1000 pieces to **BGN 101 per 1000 pieces**;
 - **Proportional excise duty** – from 40.5% to **23 % of the selling price**;
 - **Minimum total excise duty** for cigarettes is introduced – **not less than BGN 148 per 1000 pieces** (i.e. the sum of the specific and of the proportional excise duties shall not be less than BGN 148 per 1000 pieces).

The change aims at reaching the minimum excise duty rates applicable in the European Community for the different excise goods. .

As Art. 32, para 2, 3, 4, 5 and 6 EDTWA have been repealed, the tax relief for agricultural producers is abandoned **as from 1 January 2010**. By the time of the change, they were paying excise duty at reduced rates on fuel used for processing the land.

5. Production and storage of excise goods

The amendment to Art. 59 of EDTWA clarifies the scope of “production of excise goods”, namely:

- It is specified that production of alcohol, alcohol beverages and tobacco products includes processing and reprocessing of all types of raw materials, as a result of which excise goods are created or packed;
- Production of energy products includes: oil and natural gas extraction, processing or refining oil or bituminous minerals, natural gas and other hydrocarbons in gaseous state aimed at obtaining energy products, other processing or reprocessing that require technological

installation for obtaining energy products, for which an excise duty rate has been determined, filling gas bottles with liquid gas oil intended to be used as heating oil, packaging and repackaging of energy products.

With the new Art. 60a of EDTWA, production of excise goods out of tax warehouses shall be allowed in cases of testing machines and equipment, but only under the supervision of the Customs authorities. For excise goods produced as a result of testing, excise duty shall be paid or otherwise the goods shall be destroyed under the supervision of the Customs authorities.

The new para 4 of Art. 65 of EDTWA provides for an explicit prohibition that activities representing production of excise goods be performed in a tax warehouse for storing. It is specified what types of common processing are allowed to be performed in the tax warehouse after notifying the Customs authorities in advance and in writing.

In a tax warehouse, there shall not be stored excise goods for which the excise duty is paid, except in extraordinary circumstances after permission from the Customs authorities.

The changes enter into force as from **1 December 2009**.

6. Means of measurement

Pursuant to the newly created Art. 103a, tax liable persons under EDTWA shall use means of measurement, which are in accordance with the Act of Measurements and the related legislation on their implementation. Within 45 days of entering into force of ASAEDTWA (1 December 2009), the Minister of Finance shall issue an Ordinance to define specific requirements and the control to be performed by the Customs authorities over the means of measurement.

Information from the means of measurement shall be submitted electronically through the automated reporting systems of the persons to the Central Customs Directorate, according to a procedure, in a manner and format determined by the Director General of the Customs Agency.

The excise goods, which have not been accounted for through the means of measurement, shall not be allowed to enter or depart from tax warehouses and establishments of registered persons under EDTWA.

The changes enter into force as from **1 December 2009**.

7. Movement of excise goods along with an electronic administrative document

With ASAEDTWA, **new Section VI “a”** is created, which regulates the movement of excise goods along with an electronic administrative document.

As of **1 April 2010**, computer-based Excise Movement and Control System (EMCS) is introduced. This system replaces the currently effective paper-based procedure for movement of excise goods under excise duty suspension arrangement throughout the Community. This change allows monitoring the movement of excise goods in real time.

The movement of excise goods under excise duty suspension arrangement shall be performed compulsorily along with a registered electronic administrative document (e-AD), which shall be submitted through the computer-based system by the following persons:

- Authorised warehouse keeper of dispatch - consignor;
- Authorised warehouse keeper, whose tax warehouse will receive the excise goods, which are in possession of the titleholder of the regime “release for free circulation”;
- Registered consignor – when the goods are put under a “release for free circulation” arrangement and at the same time, under excise duty suspension arrangement.

The new provisions regulate the receipt of excise goods on the territory of the country, according to which, within a period not longer than 5 working days from the end of the date of movement of the excise goods, the consignee of the excise goods shall confirm their receipt by submitting a message through the computer-based system (EMCS). The message for receiving the excise goods shall be processed by the Customs authorities and if it corresponds to Regulation (EC) No 684/2009, it shall be sent to the consignor of the excise goods or to the respective authorities of the other member state. If it does not correspond, the Customs authorities shall notify the consignee through the computer-based system.

Art. 44, item 44 EDTWA provides for a definition of a “registered electronic administrative document”, which is an electronic administrative document that has been given a unique administrative reference code by the Customs authorities. The electronic administrative document shall be reported in the warehouse inventory register in the tax period when it is received, respectively issued.

New Section VI “b” is created by ASAEDTWA, which provides for instructions regarding actions to be undertaken by the persons when the computer-based system is out of order. The provisions enter into force as from **1 April 2010**. The major points are as follows:

In extraordinary circumstances, when the computer-based system is out of order, the movement of excise goods under excise duty suspension arrangement may commence only with the permission of the respective Customs Office, by means of certification of a document in hard copy, which contains the information of the e-AD. This document shall be issued in three copies (the first one shall be kept by the consignor, the second one shall be kept by the competent Customs Office and the third one shall accompany the goods). If the consignor decides to change the place of receipt of the excise goods and to point another place of receipt of the goods, he shall obtain permission by the competent Customs Office. This is done by certification of document in two hard copies, which contains the information of the notification for change of the place of receipt of the excise goods.

In case the notification of receipt cannot be submitted in time, the consignee shall file with the competent Customs Office a document, which shall contain the same information as the electronic notification of receipt certifying that the movement of the excise goods has been completed.

When the operation of the computer-based system is restored, the consignor shall submit the electronic administrative document, which after validation replaces the document issued in hard copy.

8. Excise stickers

Orders of excise stickers shall be made every month on the basis of the monthly average quantity of excise goods released for consumption. The new provision enters into force as from **1 January 2010**.

According to the amendments to Art. 64, **as from 1 January 2010**, the licensed warehouse keepers, the registered consignees, the temporarily registered consignees and the importers shall receive the respective quantity of excise stickers, as follows:

- For licensed warehouse keepers and registered consignees – the number of excise stickers shall not exceed the monthly average quantity of excise goods released for consumption, whereon affixed excise stickers have been increased by 15 %. In cases when the person has not carried out activities – the number of excise stickers shall not exceed the projected monthly average quantity of excise goods released for consumption and whereon excise stickers have been affixed;
- For temporarily registered consignees – the number of excise stickers shall not exceed the quantity of excise goods specified in the licence under Art. 58b;
- For importers – the number of excise stickers shall not exceed the quantity agreed with the foreign person.

According to Art. 64, para 9, as from **1 January 2010**, if the persons above need a larger quantity of excise stickers, they shall make a reasoned request to the head of the competent Customs Office. Within 7 days, there shall be issued the respective decision or silent refusal, which may be appealed against under the Administrative Procedure Code.

In accordance with the new para 10 of Art. 64 of EDTWA, when the excise stickers are to be affixed in a tax warehouse on the territory of the country, they shall be ordered only by the licensed warehouse keeper to the competent Customs Office as per location of the tax warehouse wherein the excise stickers will be affixed. The provision enters into force as of 1 January 2010.

As of 1 January 2010, persons ordering excise stickers shall submit to the respective Customs Office a report on the excise stickers received for each quarter, according to a procedure and in a manner regulated by the Regulations on implementation of EDTWA. The reports on the excise stickers shall be filed within the time for submission of the excise duty declaration, after expiration of the relevant

quarter following the reporting period. In case of shortages of excises stickers excise duty shall be paid.

9. Collateral

By ASAEDTWA, Chapter V Collateral is amended, which may be summarized as follows:

- As from 1 December 2009, the new text of Art. 81a of EDTWA regulates that the licensed warehouse keeper is obliged to provide new collateral for the excise duty due, not later than 14 days before expiration of the time of the previous collateral;
- The new Art. 81b of EDTWA provides for the rules, conditions, time limits and the amount of collateral, which the registered consignor shall provide to the Customs authorities, to secure the payment of the excise duty, which may become due for the goods dispatched under excise duty suspension arrangement. The provision enters into force **as from 1 April 2010**;
- The provision of Art. 83, para 6 of EDTWA is amended so that the time limits, after expiration of which the Customs authorities undertake actions for utilizing the collateral provided at the amount of the excise duty due, are extended in case of ordered excise stickers for foreign goods (from 60 to 90 days). The amendment enters into force **as of 1 January 2010**.

10. Restrictions and Prohibitions

By ASAEDTWA, the provisions in relation to Chapter seven “Restrictions and Prohibitions” of EDTWA are amended and supplemented. The changes enter into force as of **1 December 2009** and concern two major issues:

- The unloading of excise goods received under duty suspension arrangement by a licensed warehouse keeper shall take place in a tax warehouse. In cases when the goods are received by a registered consignee or temporarily registered consignee, the unloading shall take place only at the sites indicated in the respective certificate or licence;
- It is prohibited the selling, storing and offering of tobacco products by traders, which are not registered under the Value Added Tax Act and do not possess a licence for selling tobacco products.

11. Requirements to the excise tax documents

According to the newly created para 11 of Art. 84 of EDTWA, an excise tax document shall be issued for each vehicle whereby excise goods leave a tax warehouse. Another requirement related to excise tax documents is that, when excise goods owned by a person-depositor leave the tax

warehouse, in the excise tax document there shall be filled in information about the licensed warehouse keeper as well as information about the person-depositor.

The changes enter into force **as from 1 December 2009**.

12. Transitional and final provisions of ASAEDTWA

Obligation for licensing and re-registration of the tax liable persons under EDTWA are introduced, as follows:

- In a 3-month time limit of entering into force of an Ordinance of the Minister of Finance, for the specific requirements and control by the Customs authorities over the means of measurement, the licensed warehouse keepers and persons registered under EDTWA shall bring their activity in conformity with EDTWA and inform accordingly the Director General of the Customs Agency, respectively the head of the competent Customs Office. Receiving a document from the Customs authorities, which confirms compliance with the EDTWA, is a condition for the said persons to continue carrying out their activity;
- Registered traders are liable to apply for issuance of a new certificate of registration within 14 days from entering into force of the Act (i.e. as of 1 December 2009). The application is filed to the Head of the Customs as per the location of the establishments where the excise goods are received/unloaded. The existing certificates of registration shall be valid for 45 days as from 1 December 2009;
- Persons that as at 1 December 2009 have a licence for trading with tobacco products issued under the Tobacco and Tobacco Products Act shall file an application to the Head of the Customs as per the location of the trade warehouse/trade establishment for issuance of a new licence under the EDTWA, by 30 April 2010. Until obtaining such a licence or denial of one, the persons may carry out their activity;
- Until 1 December 2009 producers of energy products that have not been obliged to register under EDTWA, are able to continue carrying out their activity in case by 28 February 2010 they submit the documents needed for issuance of a licence for managing a tax warehouse. The said persons are obliged to follow the provisions of EDTWA for licensed tax warehouse keepers.

13. Administrative and penal provisions

For the purpose of strengthening the administrative control, as of 1 December 2009, ASAEDTWA stipulates more severe administrative and penal provisions and gives more power to the Customs authorities. The administrative and penal provisions are significantly amended and supplemented, for instance:

- Traders that warehouse, offer or sell in trade warehouses or sites tobacco products without being registered under VATA, shall be subject to a fine from BGN 15,000 to BGN 50,000, or for legal entities - to a penalty from BGN 50,000 to BGN 100,000, their licence shall be revoked for one year and the tobacco products shall be confiscated to the benefit of the state;

When the violation is repeated, the fine shall be from BGN 50,000 to BGN 100,000, the penalty shall be from BGN 100,000 to BGN 150,000, the licence shall be revoked for three years and the tobacco products shall be confiscated to the benefit of the state.

- When excise duty is charged with a delay in the period following the period, during which the excise duty has become chargeable according to the EDTWA, a penalty of 50% of the excise duty due, but not less than BGN 400, shall be imposed.

14. Other changes

Amendments to the Local Taxes and Charges Act have been made by ASAEDTWA, as the provisions, which regulate the payment of the fee for issuance of a licence under Tobacco and Tobacco Products Act, are repealed.

The information set out above has the purpose only to outline specific issues related to the application of the amended EDTWA and is not exhaustive. In case you have questions regarding the application of the new provisions, please do not hesitate to contact us at the following tel. 02/943-37-00, fax 02/943 37 0, e-mail office@afa.bg or at: Sofia 1504, 38 Oborishte St.