

Comments on the Excise Duties and Tax Warehouses Act, in force as of 1 January 2006

In the State Gazette, issue 91 of 15 November 2005, was published an Excise Duties and Tax Warehouses Act (EDTWA). The adoption of this Act introduces conceptually new procedure for assessment of excise duties on the production and on the import of excisable goods.

The major purpose of EDTWA is the adaptation and harmonization of the Bulgarian excise duty legislation with the EU's one with respect to the Bulgaria's assumed obligations, regarding the Bulgaria's preparation for accession to the European Union.

The major part of the changes is conceptual and they introduce a new taxation approach. The Act introduces basic terms and concepts, the understanding of which is a precondition for the application of the new texts.

1. Scope

The major groups of goods, subject to excise duty are preserved the same as in the hitherto existing Excise Duty Act, as well as:

- The goods, which are subject to excise duty, **are explicitly listed in Art. 2 of the Act.**
- **Groups of excisable goods** are introduced, and an explicit definition is given for every group. The scope of the groups corresponds entirely to the positions of the respective type of goods, envisaged in the Customs Tariff (and the Combined Nomenclature of the Republic of Bulgaria, which is a part of the Customs Tariff) to the Customs Act.

2. Excise duty rates

Articles 31 – 40 of the newly adopted EDTWA explicitly fix the excise duty rate for types of goods as follows:

- cigarettes – BGN 0.015 per piece plus 48% from the sale price;
- liquors – BGN 1100 per 1 hectoliter of a finished product;
- leaded petrol – BGN 670 per 1000 liters;
- unleaded petrol – BGN 530 per 1000 liters;
- gas oil – BGN 430 per 1000 liters;
- kerosene – BGN 430 per 1000 liters, etc.

The act introduces **differentiated rates for the energy products**, when they will be used as fuel for heating, for daily necessities or for agriculture and forestry, fruit-growing, fish-farming, construction activities, stationary engines and non-road motor vehicles.

3. Excise liable persons

Article 3 of EDTWA (in force as of 1 July 2006) clearly defines the scope of the excise liable persons. It includes the licensed warehouse keepers and the registered persons, the importers of excisable goods, the excise duty exempt final consumers and the persons, who have disposed of or produced excisable goods in violation of the Act.

4. Initial moment of the obligation for the accrual of the excise duty

Till 1 July 2006 the obligation for accrual of an excise duty will arise **at the moment of the realization** of the produced excisable goods. EDTWA determines **new approach** for the arising of the obligation for excise duty payment – **the moment of the excisable goods production**. With respect to the imported goods, the rule, that excise duty is due at the moment of their import in Bulgaria, is preserved. Exception from this rule is allowed only for excisable goods under “deferred excise duty payment” regime. In this case the obligation for excise duty payment arises at **the moment when** the excisable goods are **released for consumption**, which moment can be when:

- the excisable goods are taken out of the tax warehouse, and they are not under a “deferred excise duty payment” regime;
- the terms for movement of excisable goods under a “deferred excise duty payment” regime are not complied with;
- excisable goods are consumed in a tax warehouse, unless they are used as raw materials in the production of excisable goods;
- excisable goods are produced outside the “deferred excise duty payment” regime;
- excisable goods are imported in the state, if they are not under a “deferred excise duty payment” regime;
- excisable goods, stamped with excise duty labels, are taken out of a tax warehouse or the 60-day term from obtaining the excise duty labels for goods has expired;
- shortages of excisable goods are established.

The excise duty is accrued by the licensed warehouse keeper or by the registered person at the moment, when the excise duty becomes due.

5. Deferred excise duty payment regime

The Act envisages a possibility for the producers and the importers of excisable goods to obtain a license for production, warehousing, receiving and forwarding of excisable goods under a “deferred excise duty payment” regime. This regime is a temporary deferral of the excise duty on the goods

upon their production or upon their import in the territory of the state and only licensed warehouse keepers can apply it. In this case the excise becomes **due at the moment when the goods are released for final consumption** (as discussed herein above).

5.1. Requirements to the persons – licensed warehouse keepers

Article 47 EDTWA defines the requirements, which the licensed warehouse keepers should meet. The huge number of requirements, which the licensed warehouse keepers have to cover simultaneously, make impression. Because of these provisions, even the non-fulfillment of a single requirement can lead to a refusal for issuance of or suspension of the license for management of a tax warehouse.

5.2. Procedure for issuance of a license for management of a tax warehouse

A procedure for issuance of a license for management of a tax warehouse is introduced. It includes the filing of a written statement to the Customs Agency Director, with attached documents, as envisaged in Art. 48, para 1 of EDTWA. With a single statement the issuance of licenses for management of more than one tax warehouse can be requested, but it must be taken into account that the necessary documents have to be prepared for each warehouse (incl. the distribution centers) separately.

The right to apply a “deferred excise duty payment” regime for production, warehousing and movement of excisable goods arises **as of the date of obtaining the license**.

The excisable goods shall be compulsorily accompanied in their movement by **an accompanying administrative document**, which is issued in 5 duplicates by the licensed warehouse keeper. The standard form and the requisites of the accompanying administrative document will be determined in the Rules for Application of EDTWA.

5.3. Deadline for filing a request for issuance of a license for management of a tax warehouse

Pursuant to §9 of the Transitional and Final Provisions of EDTWA, the existing producers of excisable goods on **1 January 2006** shall file requests for issuance of a license for management of an excise duty warehouse till **1 March 2006**. Thus, till the enforcement of the act for issuance of a license for management of a tax warehouse or the refusal for its issuance, they will continue their activity under EDTWA as licensed warehouse keepers.

5.4. Collateral for a “deferred excise duty payment” regime

During the period of a “deferred excise duty payment” regime, the tax liability has to be guaranteed by providing a collateral in the form of a bank deposit or a bank guarantee. This is one of the conditions for admission of the regime.

The procedure for calculation of the average monthly indicators will be settled in the Rules for Application of EDTWA. It is specific in this case that for every excise duty warehouse, separate analytical accounting for the available quantities of excisable goods shall be done, as well as separate collateral for the excise duty due on these goods shall be provided.

6. Registration of the facilities for distillation of rakiya (brandy) and the wine-production facilities of small wine-producers

Mandatory registration under EDTWA of the so-called facilities for distillation of rakiya (brandy), defined in the Act as “specialized small facilities for distillation”, and of “wine-production facilities of small wine-producers”, is introduced as of 1 January 2006. The registration is done by filing a request to the director of the respective customs office at the location of the facility before starting the activity. The specified documents in Art. 56, para 3 EDTWA have to be attached to the request. The director of the customs office issues a certificate for registration of the facility in a 14-day term.

7. Recording and accounting (filing a return and payment)

The texts in Chapter Six of ETTWA repeat to considerable extent the provisions of VATA with regard to the procedure and the terms for issuance of tax documents. Thus, the Act introduces new concepts as an excise duty document, which shall be issued on the date, on which the excise duty becomes due, and an excise duty return, whereby the warehouse keeper or the registered person declares information, regarding his/hers activity for every tax period.

An obligation is introduced that the return for the period has to be filed for every single tax warehouse in the respective customs office at the location of the warehouse, regardless of the fact that the liable person is only one.

A new moment in the Act is the implementation of an obligation for keeping a **Register “Journal of the Available Stocks”** by the licensed warehouse keepers and the registered persons under the Act. It shall be filed (also on a magnetic carrier), together with the excise duty return, in the respective customs office within a 14-day term starting from the end of the tax period, to which it refers.

8. Specific requirements for ordering excise duty labels, marking, denaturizing and usage of measuring devices

8.1. Excise duty labels

As of 1 July 2006 the necessary quantity of excise duty labels shall be ordered to the competent customs office, which is obliged to provide them within a 30-day term after their order.

8.2. Marking

For supervision purposes a mandatory marking of the liquid fuels, which are taxed with reduced rates, is introduced. The marking of these products, as well as **the denaturizing** of ethyl alcohol, can

be executed **only in a tax warehouse and in the presence of a customs body**. The procedure and the terms for execution of marking / denaturizing will be determined by the Rules for Application of EDTWA.

8.3. Measuring devices

The producers of goods subject to excise duty have to use in the production measuring devices that cover the requirements of the Measurements Act. The Minister of Finance will determine the specific requirements to the measuring devices.

9. Reimbursement of excise duty

The regime for reimbursement of a paid excise duty on the production of food products and medicines is preserved, and a new possibility for reimbursement of a paid excise duty on alcohol and alcoholic beverages is introduced, when they are used:

- for medical purposes in hospitals and pharmacies;
- for production test-runs or for scientific purposes;
- for scientific studies;
- **in a production process, under the condition that the final product does not contain alcohol.**

In force as of 1 July 2006 the overpaid excise duty or that, subject to reimbursement, shall be offset or reimbursed by filing a request to the director of the respective customs office, who shall pronounce his/hers justified decision of approval or refusal to the request, within a 30-day term, and in the cases of export – within a 14-day term. The non-pronouncement in these terms shall be considered a **silent refusal**, which together with the decision can be appealed before a regional customs office.

10. Control

Pursuant to EDTWA, as of 1 July 2006, the excise duty will be administrated by the customs administration, and not by the tax authorities as it was till now. Article 102 EDTWA stipulates that the control over the excisable goods is performed by the customs authorities, but simultaneously the Act does not regulate the rights and the obligations of the controlled persons, the registration, respectively the deregistration under the Act.

11. Enforcement of EDTWA

The Excise Duties and Tax Warehouses Act enters into force as of 1 January 2006, with the exception of:

- Paragraph 1, § 1 of the Act with respect to the revocation of the Excise Duty Act and Art. 47 – Art. 58 from the Act (regarding the licensing and the registration of the persons under this Act) shall **enter into force as of 1 January 2006**.
- The provisions of Art. 1 – Art. 46 and Art. 59 – Art.128 EDTWA and §1, para 3 of the Act (in relation to the treatment of the sales of goods in commercial outlets, licensed for duty-free trade, as export) shall **enter into force as of 1 July 2006**.
- The provisions of §1, para 2 (regarding the permission for execution of the activity “duty-free operator” till the publishing of a Duty-free Trade Act), §4 (with respect to the publishing of Rules to the Act in a 6-month term after the publishing of the Act in the State Gazette) and §10, i. 2 (in relation to the adoption of enactments for the application of the Act till 1 January 2006) of the Act shall **enter into force as of the date of the promulgation of the Act in the State Gazette – 15 November 2005**.

The major part of the provisions of EDTWA shall **enter into force as of 1 July 2006**. These provisions concern primarily the terms and the procedures for licensing and registration under EDTWA and the application of the new deferred excise duty payment regime. Till the enforcement of the provisions of Art. 1- Art. 46 and Art. 59 – Art. 128 EDTWA and §1, para 3 EDTWA (as of 1 July 2006), the provisions of the hitherto existing Excise Duty Act will be applicable.

We keep the right to inform you duly about the specific procedures in relation to the practical application of EDTWA in the shortest possible term after the publishing of the Rules for the Application of EDTWA.

The information provided in this letter presents only a general view of the provisions of EDTWA and is not complete. Should any questions arise about the application of the provisions, please do not hesitate to contact us at tel. 943 37 00, fax 943 37 07 or through our web page - www.afa.bg.