

16 Annex - Taxation

## 104. LAW ON EXCISE TAXES

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- Exempt excise goods user is a natural or legal person that under the conditions laid down by this Law is issued by the tax authority the excise license allowing such person to procure excise goods without having to pay excise tax, while performing activities for the purposes specified in Articles 44 and 54 of this Law;
- Exempt excise goods user's facility is an area, plant or equipment for storage of excise goods procured by an exempt excise goods user for the needs of its activities without paying excise tax;
- Importer of excise goods is a customs debtor defined under the customs regulations, or the consignee of foreign excise goods.

## II INCEPTION OF EXCISE TAX LIABILITY

### Article 5

(1) Excise tax liability shall be incepted when:

- 1) Excise goods are produced in Montenegro (hereinafter: Montenegro);
- 2) Excise goods are imported into Montenegro.

(2) Excise tax liability may be transferred from the producer or importer to excise license-holder, or exempt excise goods user under the conditions and in the manner established by this Law.





- 3)the excise goods are used for the purposes of customs control,
- 4)the excise goods are used for quality control which is performed by authorized persons in a customs bonded warehouse,
- 5)the excise goods are destroyed under the supervision of tax authority,
- 6)a shortage of excise goods is established, which an excise license-holder proves to be the result of force majeure (excluding theft) or which is inseparably related to the production process, storage and transport of such goods,
- 7)alcohol is fully denatured in accordance with Article 44 of this Law,
- 8)tobacco products are denatured and used for industrial or horticultural purposes.

(3)Exempt excise goods user is exempted from payment of excise tax liability if:

- 1)the excise goods are dispatched and stored in an excise warehouse and if an excise license-holder has confirmed the receipt of the consignment on the copy of the excise document,
- 2)the excise goods are used for the purposes specified in Article 44 or Arti

same time, or if the creditor – excise license- holder has confirmed the receipt of the consignment in the excise document.





VII GENERAL WORKING CONDITIONS OF EXCISE WAREHOUSES

Excise warehouse

Article 18

(1)The production or storage of excise goods under the deferred excise tax payment regime may be carried out only in the excise warehouse that is issued the license for work by the tax authority (hereinafter: excise license), unless otherwise prescribed by this Law.

(2)The Ministry in charge of finance shall prescribe in greater details the conditions for establishment and operation of excise warehouses.

Conditions for obtaining the excise license

Article 19

The legal person fulfilling the following conditions may apply for the excise license:

- 1)to perform an activity related to excise goods in accordance with the prescribed conditions and to have the head office registered in Montenegro;
- 2)to keep business books under the double-entry bookkeeping system;
- 3)to regularly fulfill its tax liabilities;
- 4)that no bankruptcy or liquidation proceeding has been instituted against such person;

(3)The person applying for excise license for the measuring devices defined in paragraph 2 of this Article shall be obliged to obtain approval for using the type of measuring device from authority in charge of measures.

#### Excise license

##### Article 21

(1)Excise license may be issued if the facilities, technical and economic requirements prescribed by this Law are met.

(2)Excise license shall be issued in the name of the applicant and cannot be transferred to another person.

(3)Excise license may be issued for one or more excise warehouses.

(4)Excise license shall include the data on:

1)the location of the excise warehouse;

2)working conditions of the excise warehouse or excise warehouses;

3)the type of excise goods that may be produced and stored in the excise warehouse and dispatched from the excise warehouse;

4)liabilities of the excise license-holder towards the tax authority;

5)the form of excise tax payment guarantee;

6)the title of the tax authority and

7)period for which the excise license is issued.

(5)Prior to issuing excise license, the tax authority shall establish on site whether all requirements for issuance of the excise license are met.

(6)Tax authority shall make a decision on the application for excise license within 60 days from the day the complete application is received.

#### Liabilities of excise license-holder

##### Article 22

(1)Excise license-holder shall:

1)provide for appropriate safeguarding of excise goods in the excise warehouse; supervise the dispatch and receipt of excise goods; identify losses or shortages;

2)provide for smooth supervision by the tax authority;

3)keep the records of excise goods by type and quantity and records on the movement of excise goods for each excise warehouse and submit to the tax authority monthly excise tax calculations and monthly inventories of goods in stock;

4)inform the tax authority of all changes in the information indicated in the application for the excise license;

5)in the case of status alteration, extension, reduction or termination of the business activity, request from the tax authority to change the excise license.

(2)If the tax authority decides that the excise license-holder does not meet the obligations defined in paragraph 1 of this Article, such authority shall specify the deadline for elimination of the irregularities.

(3)The Ministry in charge of finance shall prescribe the contents and manner of keeping records referred to in item 3), paragraph 1 of this Article.

Excise tax payment guarantee instruments

Article 23

- (1) To ensure the fulfilment of the liability of payment of excise tax, excise license-holder shall submit a guarantee instrument for payment of excise tax to the tax authority in accordance with this Law.
- (2) The value of the excise tax payment guarantee instrument shall correspond to the amount of excise tax chargeable for excise goods to which the excise license relate.
- (3) If the excise license-holder keeps several excise warehouses, and the excise tax payment guarantee refers to all such warehouses, the value of the guarantee shall correspond to the total amount of the excise tax liability.
- (4) In the case of expiry of the excise license, the excise tax payment guarantee instrument may not be released until the excise tax for goods in stock is paid.
- (5) The Ministry in charge of finance shall prescribe in details the guarantee procedure and types of excise tax payment guarantee instruments.

Expiry of excise license

Article 24

- (1) Excise license expires:
- 1) when the performance of the activity related to the excise goods is terminated;
  - 2) by returning the excise license;
  - 3) when the tax authority revokes the excise license.
- (2) The tax authority shall revoke the excise license if the excise license-holder fails to meet the requirements specified in the excise license, but particularly:
- 1) if the excise license-holder fails to provide an appropriate stock control system or fails to make the inventory within the timeframe specified in the excise license;
  - 2) if the amount of the excise tax payment guarantee instrument does not correspond

Article 26

(1) Exempt excise goods user may procure excise goods without paying excise tax only if issued the relevant license by the tax authority.

(2) Legal entity may apply for the license defined in paragraph 1 of this Article if fulfils the following requirements:

- 1) in accordance with the prescribed requirements performs the activity for which such legal entity uses the excise goods for the purposes specified in Articles 44 and 54 of this Law;
- 2) keeps business books according to the double entry book-keeping system;
- 3) regularly meets tax and customs liabilities;



IX EXCISE TAX REFUND

Article 30

(1)The following shall have the right to excise tax refund:

- 1)excise license-holder that procured excise goods at the price with excise tax included and used such goods in the excise warehouse for the production of excise goods;
- 2) importer that is returning imported goods abroad in the unchanged condition, and that paid the excise tax for such goods on their import;
- 3) exporter exporting excise goods for which the excise tax has been paid;
- 4)entity that procured excise goods at the price with excise tax included or the excise tax for such goods is paid on import, and the excise goods are used for the purposes defined in Articles 44 and 54 of this Law

(2)The Ministry in charge of finance shall regulate in details the conditions and manner for paid excise tax refund.

(3)Excise tax shall be refunded within the deadlines specified by the law regulating tax procedure.

X EXCISE TAX EXEMPTIONS

Excise tax exemption for diplomatic and consular missions and international organizations

Article 31

(1)Excise tax is not paid for the following excise goods:

- 1)for the official needs of diplomatic and consular missions accredited in Montenegro;

3) mineral oils, mineral oil derivatives and substitutes in the standard reservoirs of motor vehicles, watercrafts or aircrafts incoming from abroad and are not intended for further sale and are exempted from import duties in accordance with customs regulations.

4) which are dispatched from customs bonded warehouses to duty free shops opened at international border crossings with customs and passport control provided, for sale to passengers in accordance with customs regulations.

## XI ACCOUNTING FOR AND PAYMENT OF EXCISE TAX

### Excise tax calculation

#### Article 33

- (1) Excise taxpayer calculates the excise tax by him/herself.
- (2) Tax period for calculation of the excise tax is one calendar month.
- (3) The excise taxpayer shall present the calculated excise tax in the monthly excise tax return.

#### Article 34

- (1) The return referred to in paragraph 3 of Article 33 of this Law shall be submitted to the tax authority by the 15<sup>th</sup> day of the month following the expiry of the calculation period.
- (2) Excise taxpayer shall submit the excise tax return, regardless whether such taxpayer is required to pay the excise tax in the prescribed period.
- (3) If the excise license-holder has more than one excise warehouse, such license-holder may submit a joint return with the calculation of the excise tax for all excise warehouses provided that he/she maintains separate records on the calculated excise tax for each excise warehouse in his/her bookkeeping.
- (4) If the exempt excise goods user stores excise goods in several facilities, he/she may submit a joint return with the excise tax calculation for all facilities provided that he/she maintains separate records of the calculated excise tax for each facility in his/her bookkeeping.
- (5) The excise tax return shall be submitted within 30 days from the day when the excise license expires.
- (6) In the cases of bankruptcy, liquidation or merger of the excise taxpayer, the return shall be submitted no later than 30 days after the proceeding is concluded.

### Excise tax payment

#### Article 35

- (1) Excise tax calculated for a given tax period shall become due on the last day of such tax period, and must be paid within fifteen days from the due date.
- (2) The excise tax referred to in Article 15, item 3 of this Law shall become due on 30 day from of the day when the excise document is issued and must be paid within fifteen days from the due date.
- (3) The excise tax referred to in Article 34, paragraph 5 of this Law shall become due on the day the excise license expires, and must be paid within fifteen days from the due date.
- (4) The excise tax referred to in Article 34, paragraph 6 of this Law shall become due on the day when bankruptcy, liquidation or merger proceeding is concluded, and must be paid within 30 days from the due date.





quantity of alcohol in the final product is entirely of fermented origin;

2)with alcoholic content over 15 %vol., but not exceeding 18 %vol., provided that the quantity of alcohol in the final product is entirely of fermented origin, and without enrichments.



(6)The Ministry in charge of finance in cooperation with the ministry in charge of agriculture shall prescribe the upper quantity limit of alcohol beverages for personal use referred to in paragraph 2 of this Article.

(7)The Ministry in charge of finance shall prescribe in details the procedure for excise tax payment by small producers of alcohol beverages.

#### Tobacco products

##### Article 46

Tobacco products subject to payment of excise tax are: cigarettes, cigars and cigarillos, hand rolling tobacco and other smoking tobacco.

#### Cigarettes

##### Article 47

(1)Cigarettes are considered to be:

- 1)the rolls of tobacco, that may be smoked as such, and are not classified as cigars or cigarillos according to this Law;
- 2)the rolls of tobacco which are by simple non-industrial method inserted into cigarette paper tubes;
- 3)the rolls of tobacco which are by simple non-industrial method rolled into cigarette rolling paper.

(2)The roll of tobacco referred to in paragraph 1 of this Article is considered to be one cigarette which length is up to 9 cm not including filter or cigarette-holder; two cigarettes of the length over 9cm but not exceeding 18cm not including filter or cigarette-holder; three cigarettes of the length over 18cm but not exceeding 27cm not including filter or cigarette holder, and so on.

(3)Cigarettes are also considered to be the products that are in whole or in part made of tobacco substitutes and which fulfill the conditions referred to in paragraph 1 of this Article, with the exception of those products used exclusively for health purposes.

#### Cigars and cigarillos

##### Article 48

(1)Cigars and cigarillos are tobacco rolls that may be smoked as such, if they are:

- 1)made entirely from natural tobacco;
- 2)with an outer wrapper of natural tobacco;
- 3)with the outer wrapper of the tobacco color, which is in relation to longitudinal axis of the cigar spirally wrapped at the acute angle of not less than 30° and the binder of reconstituted tobacco, where at least 60% of the roll of tobacco particles are both wider and longer than 1.75mm;
- 4)with the outer wrapper of the tobacco color of reconstituted tobacco, which weight, excluding filter and cigarette holder, exceeds 2.3 grams and where at least 60% of the roll of tobacco particles are both wider and longer than 1.65mm and which circumference must be at least one third of the length of the cigar but not less than 34 mm.

(2)Cigars and cigarillos are also considered to be the products that are in whole or in part made of tobacco substitutes and which fulfill the conditions referred to in paragraph 1 of this Article, with the exception of the products used exclusively for medical purposes, provided that they have:

- 1)the wrapper of natural tobacco or reconstituted tobacco;

2)the wrapper and binder of tobacco of reconstituted tobacco.

Tobacco for smoking

Article 49

(1)Tobacco for smoking is considered to be:

1)tobacco that is cut or otherwise sliced, rolled or pressed into pieces and may be smoked without further industrial processing;

2)tobacco refuse that may be smoked, but is not listed in the goods from Articles 47 and 48 of this Law.

(2)Tobacco for smoking shall also be considered to be the products that are in whole or in part produced from tobacco substitutes and fulfill the conditions referred to in paragraph 1 of this Article, with the exception of products used exclusively for health purposes.

(3)Tobacco for smoking shall also be considered to be the fine-cut tobacco for rolling cigarettes, containing more than 25% of tobacco particles shorter and narrower than 1.4 mm, with weight taken into consideration.

Excise tax base, rate and amount of excise tax

Article 50

(1)Excise tax base for tobacco goods is 1000 pieces and retail price, i.e. kilogram of the goods.

price category of cigarettes which had largest volume of sale in Montenegro in the preceding year.

(4) Government of Montenegro shall prescribe method and procedure of determining the amount of most popular price of cigarettes from the paragraph 3 of this Article

(5) Following the proposal of the administrative agency competent for tobacco, Ministry of Finance shall determine the amount of most popular price of cigarettes from the paragraph 3 of this Article, at latest by 31 December of the previous year and shall publish it in the Official Gazette of Montenegro.

(6) Price from paragraph 5 of this Article shall apply as of the 1 January of the following year.

Mineral oils, mineral oil derivatives and their substitutes

Article 51

(1) Excise tax shall be paid on mineral oils, mineral oil derivatives and their substitutes (hereinafter: mineral oils) as determined in this Law.

(2) The type of mineral oils referred to in paragraph 1 of this Article is determined in accordance with the classification of these products in the Customs tariff, or based on the features of specific goods.

(3) Mineral oils include petroleum oil, coal tar and oil obtained from coal schist, peat or other bituminous substances, but not including such hydrocarbons or bituminous substances that are:

1) in solid or semi-solid state at the temperature of 15° C; or

2) in gaseous state at the temperature of 15° C and under the pressure of 1013.25 millibar.

(4) For the purposes of this Law 'mineral oils' shall also imply:

1) any product sold or used as engine fuel,

2) additives or extenders added to engine fuels,

3) any other hydrocarbon produced from the crude oil, which is sold or used as heating fuel

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5) heating oil (tariff code CN 2710 19 61 00 to 2710 19 69 00) 19.5 EUR on 1000 kilograms;

6) liquid petroleum gas (tariff code CN 2711 12 11 00 to 2711 19 00 00) used:

- as motor fuel 123.5 EUR on 1000 kilograms;
- as motor fuel for industrial and commercial purposes 58.4 EUR on 1000 kilograms;
- for heating 26 EUR on 1000 kilograms.

### Article 52a

Deleted.

### Article 53

(1)The excise tax for additives and extenders that are added to mineral oils equals the excise tax prescribed for the mineral oil they are added to.

Mineral oils marking

Article 55

(1) Mineral oils under tariff codes CN 2710 00 39 00 and CN 2710 00 21 90, that are used as heating oils must be marked with the prescribed color and indicator. The marking of mineral oils may be carried out only in the excise warehouse that is issued the marking license by tax authority. If mineral oils are not marked in the excise warehouse, such oils shall be considered as not marked.

(2) Mineral oil imported into Montenegro shall be considered marked if the importer submits a certificate by a foreign tax or customs authority, producer, or foreign body in charge of marking, that such oil has been marked outside Montenegro and that with respect to the type and quantity, it contains at least the marking matters prescribed by this Law. If such certificate is not submitted or may not be proven, the mineral oil shall be considered as not marked.

(3) The storage of specific mineral oils shall be organized in such a way as to ensure that other products do not have the effect of neutralizing the color or indicator.

(4) The Ministry in charge of economy shall prescribe the procedure for coloring and marking mineral oils in accordance with this Article.

Article 56

(1) Marked mineral oils used for heating may not be used for other purposes and shall not be used as propellant for motor vehicles, or watercrafts or other engines, or for the standard reservoirs of motor vehicles or watercrafts or other engines.

(2) Mineral oils used for heating shall not be released into circulation at petrol stations or other retail locations designated for sale of oil derivatives.

XIII EXCISE GOODS MARKING

Excise tax stamps

Article 57

(1) Producer or importer shall mark tobacco products and alcohol beverages, with the exception of beer, with control excise stamps, prior to releasing them for use, or into free circulation.

(2) Excise tax stamps for tobacco products must be affixed on the packaging under the cellophane wrapping or other wrapping in such a way that it is visible and may not be removed without

XIV EXCISE TAXPAYER BOOKKEEPING AND DOCUMENT ARCHIVING

Issue of invoices or other documents

Article 58

(1) Excise taxpayer must issue an invoice or other document when releasing excise goods into use, thereby certifying the dispatch of such excise goods.

(2) For excise goods being dispatched to an exempt excise goods user, the invoice or other document must include a note that such excise goods are being dispatched without payment of excise tax on the basis of the license of the exempt excise goods user, which number and date must be indicated.

(3) Excise taxpayer shall issue the receipts or other documents in two copies. The first copy is given to the excise goods consignee, and the second copy and other documents of significance for establishing the level of the excise tax liability are retained and kept in accordance with Article 61 of this Law.

Excise taxpayer bookkeeping

Article 59

(1) Excise taxpayer shall provide in the bookkeeping the information required for calculation and payment of excise tax, particularly on:

- 1) quantities of excise goods produced;
- 2) quantities of excise goods in stock, in production, in warehouses or other business premises;
- 3) quantities of excise goods sold for which excise tax has been paid according to the prescribed rates;
- 4) quantities of excise goods sold for which excise tax has not been paid;
- 5) quantities of excise goods used for the taxpayer's own purposes;
- 6) quantities of excise goods that are exempted from excise tax liability;
- 7) amounts of accounted for and paid excise tax at prescribed rates.

(2) Excise taxpayer– importer shall provide in the bookkeeping the information particularly on: import of excise goods, stocks of excise goods in the excise warehouse, the dispatch of excise goods from an excise warehouse and on the excise tax calculation and payment according to the prescribed rates.

(3) Natural person referred to in Article 17, paragraph 2 of this Law, that is a producer of alcohol beverages, shall keep separate records on the production, personal consumption and sale of such beverages, as prescribed by the Ministry in charge of finance.

Recording of equipment for production of ethyl alcohol

Article 60

Producers, sellers and importers of equipment for production of ethyl alcohol shall keep records of



Document archiving

Article 61

Excise taxpayer shall archive the issued and received invoices, excise documents and other bookkeeping documents related to the production, storage and dispatch, import and export of excise goods for the period of five years upon the expiry of the year which the documents refer to.

1)the identification number issued to excise license-holders or excise warehouse owners by tax authority;



Article 71

(1) A pecuniary fine in the amount of 50 fold to 300 fold amount of the minimum wages in Montenegro shall be imposed on a legal entity or entrepreneur- exempt excise goods user for an infringement:

- 1) if such user fails to keep records on the purchase, movement and consumption of excise goods by type, quantity and value (Article 29);
- 2) if such user exercises the right to excise tax exemption contrary to Articles 44 and 54 of this Law.





Article 85a

Notwithstanding the Article 50 paragraph 3 and 4 of this Law, excise tax chargeable on cigarettes for the period from 1 January to 30 September 2009 shall be:

- specific 3 EUR for 1000 pieces
- ad valorem 30% of their retail price

Article 85b

(1) Producers and importers of tobacco products are obligated to make an inventory on the date of effectiveness of this Law of the existing stock of cigarettes, by types and quantities, and calculate the difference of excise tax liability in accordance with the provisions of this Law.

(2) Calculation of difference of the excise tax liability from the paragraph 1 of this Article must be submitted to competent tax authority by 31 January 2009.

(3) Excise tax from the paragraph 2 of this Article must be paid by 28 February 2009.

Article 85c

The regulations for implementation of this law shall be adopted within six months from the date of entry into force of this law.

Coming into force and implementation of the Law

Article 86

This Law shall enter into force on the eighth day after its publication in the Official Gazette of the Republic of Montenegro and shall be applied as of 1 April 2002.

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(2) Excise tax on cigarettes for which the excise stamps have been delivered to a foreign supplier, but for which the delivery has not been made by the implementation date of this Law, shall be paid within 60 days from the date of their import.

(3) During the period of deferred payment of excise tax from this Article, the taxpayer shall provide payment guarantee instrument, in the amount of calculated excise tax.

### Article 19