

Authorization procedure 2017

By entering into force on 1 July 2017, rules of the authorization procedure have changed in the new excise tax legislation, i.e. Act LXVIII of 2016 on Excise Tax (hereinafter referred to as *ETL*) and of the Implementing Regulation No. 45/2016 (XI.29.) of the Ministry of National Economy on Certain Provisions of ETL (hereinafter referred to as IR).

I) Authorized activity

Production, storage, use, receipt and forwarding of excisable goods and any commercial activities therewith – in cases determined in ETL – is subject authorisation by the state tax and customs authority.

Excisable products are energy products, beer, non-sparkling and sparkling wines, other non-carbonated and carbonated fermented drinks, intermediate alcoholic products, alcoholic products and tobacco products as determined under the interpretative provisions of ETL.

1. Tax warehouse licence

Excisable goods may be produced and stored – in the framework of tax suspension arrangement – in tax warehouses until tax liability arises or untaxed excisable goods may be used in tax warehouses for tax exempt activities, as determined in ETL, where no tax payment obligation arises, i.e. for production of goods or for purposes that do not qualify as production of goods (such as the production of vinegar, chemical, cosmetic and other products not for human consumption).

By holding the authorization, an authorised tax warehouse operator is eligible for receiving and dispatching excisable products in the framework of tax suspension arrangement.

No tax warehouse authorization¹ is needed for the production and storage of

- a) energy products other than controlled energy products (electricity, natural gas, coal),
- b) distillates produced in private distillation,
- c) drinks for direct consumption², if taxes paid on the components is not less than that of the excisable product produced from these components,
- d) beer, still and sparkling wine and other non-carbonated and carbonated fermented drinks produced by tax exempt individuals,
- e) still wine as well as bottle fermented pearl wine produced by small-scale wine producers,
- f) alcoholic products produced and used for experimental, scientific and educational purposes,

¹ Paragraph 1 of Section 19 of ETL

² Point 35 of Paragraph 1 of Section 3 of ETL

- g) other controlled mineral oils generated in the course of an interim phase of waste recovery, along with fulfilment of the reporting obligation as defined in Paragraph 1 of Section 48 of ETL,
- h) alcoholic products generated during the course of an interim phase of biologic acetic acid production, along with fulfilment of the reporting obligation as defined in Paragraph 3 of Section 48 of ETL,
- i) energy products generated in the course of blending taxed additives which are regarded as mineral oils into taxed fuel in a ratio of no more than 0.2 percent by volume.

By also defining the data content of the tax warehouse licence, schedule No. 18 of the Implementing Regulation contains an exhaustive list of activities that may be carried out in a tax warehouse. All such listed activities may be carried out in a tax warehouse and are regulated specifically by ETL (i.e. tax allowances, special procedural rules, use of untaxed excisable goods for tax exempt purposes, etc.).

2. Simplified tax warehouse licence

Still wine may only be produced in a tax warehouse – with exception of bottling – when holding a simplified tax warehouse licence. Bottled spritzer made from still wine (other fermented non-carbonated drink as per Point a) of Paragraph 2 of Section 129 of ETL) as well as bottle fermented pearl wine made from home-made still wine may also be produced and stored in a simplified tax warehouse. Taxable bottle fermented pearl wine made from home-made still wine may be produced and stored up to a maximum quantity of 10,000 liters per annum. The stock of pearl wine may not exceed the limit of 10,000 liters.

Apart from the general rule, no excisable products other than the above-mentioned may be produced, stored or bottled in a simplified tax warehouse, such as beer, other pearl wine, other fermented still or pearl wine, intermediate alcoholic product or alcoholic product. Pursuant to the general rules, bottled still wine may also be stored in another tax warehouse under tax suspension arrangement; moreover still wine may also be bottled in another tax warehouse.

As a rule, upon holding a simplified tax warehouse licence the activity may be carried out without providing an excise security amount; moreover the excise regulation provides further preferences for the producers and farmers concerned to support their activities (by setting specific conditions for carrying out licenced activities).

3. Packaging licence

Upon holding a packaging licence the following activities may be carried out

- a) using and packaging other controlled mineral oil products,
- b) producing, using and packaging controlled substances (including if gained as a by-product of a manufacturing process),
- c) using and packaging completely denatured alcoholic products into retail units.

No packaging licence is required if the user holds a tax warehouse licence to carry out his/her activity; moreover if engagement in the use of other controlled mineral oil

products or controlled substances in packages of 5 liters or 5 kilograms or greater – if total use remains below 6000 liters or 6000 kilograms in a year – is notified to the state tax and customs authority.

The purpose of use may not be the production of a taxable excisable product, and other controlled mineral oil products or controlled substances may not be used as motor or heating fuel either.

4. Authorization to operate as a registered trader

Upon holding his/her licence, the registered trader is eligible for receiving excisable goods transported from another EU Member State under tax suspension arrangement. He/she, however, is not allowed to store untaxed excisable goods. As a rule, the registered trader becomes subject to tax payment obligation in parallel with receiving the excisable goods.

As a consequence of this provision, the registered trader shall hold further licences to also be able to use or trade in the received excisable goods, or he/she may directly transport excisable goods to the premises of the authorised packaging operator or of the registered user on a contractual basis.

5. Ad hoc licence for registered traders

Should a registered trader receive excisable goods on an ad-hoc basis from another Member States under tax suspension arrangement, the state tax and customs authority shall issue a licence for that specific consignment.

6. Licence for registered consignors

A registered consignor is eligible – under tax suspension arrangement – to dispatch excisable goods released into free circulation under customs procedure after receipt of them from a third country to the consignee from the place of importation (i.e. tax warehouse, tax warehouse in a member state, registered trader in a member state). The excisable goods are delivered directly from the importer to the consignee, thus, the untaxed, imported excisable goods shall not be in the possession of the registered consignor.

Taking into account the fact that the activity of the registered consignor is limited to dispatching any excisable product only, - in contrast to any other type of licence - registered consignors are not obliged to register any premises to carry out their activity.

7. Licenced engagement in activities related to excisable goods/products (excise licence)

Pursuant to Paragraph 1 of Section 67 of ETL, any commercial activity with excisable goods in free circulation may only be carried out when holding a licence for engagement in that activity.

Subject to excise licence are commercial activities carried out to trade in certain excisable goods listed in Act CLXIV of 2005 on Trade, i.e. wholesale trading, export and

import activity as well as transportation of goods from other member states into the domestic territory and from the domestic territory to other member states.

Excise licence is required to trade in the following goods:

- a) liquefied petroleum gas in packages larger than 5 kilograms,
- b) other controlled mineral oil products in packages less than 5 liters / 5 kilograms and larger than 1 liter / 1 kilogram [only in the case of wholesale trade]
- c) other controlled mineral oil products in packages larger than 5 liters / 5 kilograms [only in the case of export and import activity as well as of transportation of goods from other member states into the domestic territory and from the domestic territory to other member states],
- d) controlled energy products other than listed in points a)-c),
- e) lubricating oil,
- f) beer,
- g) still wine,
- h) sparkling wine,
- i) other fermented still wine,
- j) other fermented sparkling wine,
- k) intermediate alcoholic product,
- l) alcohol product,
- m) tobacco product.

II) General conditions of authorisation

General conditions

Applicants must satisfy the following conditions to be eligible for an excise license³:

- a) the applicant's books shall be kept in the double-entry system, or for private entrepreneurs and small-scale agricultural producers defined in the Personal Income Tax Act,
- b) the applicant must not be adjudicated in bankruptcy or liquidation proceedings and shall not be under voluntary dissolution,
- c) the applicant shall have no customs or tax debts with the customs and the tax authority, or no social security contributions owed unless instalment or deferred payment was allowed,
- d) the applicant has to provide an excise security amount,
- e) the applicant holds the authorizations, certificates from the competent authorities which are expressly prescribed by law for the activities to which the application pertains,
- f) the applicant must satisfy all criteria for carrying out the given activity and for the inspection of production and warehousing procedures,
- g) the applicant natural person, or the head or executive officer of the applicant organization should not have been sentenced by final court verdict

³ Paragraph 1 of Section 14 of ETL

- a. for an economic crime or a crime against the integrity of public life under Act IV of 1978 on the Criminal Code in force until 30 June 2013 (hereinafter referred to as “Act IV/1978”),
 - b. for any crime specified in Chapters XXVII or XXXVIII-XLIII of Act C of 2012 on the Criminal Code (hereinafter referred to as “Criminal Code”),
- and at the time of submitting the application has been exonerated from the detrimental consequences of having a criminal record.

In the interest of inspection of the licenced activity, the excise regulation specifically provides for the requirements concerning the data content of records to be kept, and the method of record-keeping as well as the related data supply obligations.

Special conditions related to specific types of licence

1. Tax warehouse licence

So that the applicant may obtain a tax warehouse licence the following conditions shall be satisfied next to the general conditions⁴:

- a) electronic record-keeping [except for pipeline tax warehouse and tax warehouses for contract distillation only],
- b) shall have professional qualifications in the administration of excise matters as determined in IR or shall employ a certified excise administrator [except for tax warehouses for contract distillation only, small-scale brewery],
- c) all criteria for the production and safe storage of excisable products must be satisfied,
- d) the applicant shall have adopted a filing and documentation system permitting proper control of the quantity of raw materials used and excisable goods produced and/or stored,
- e) detailed presentation of the activity planned to be carried out in the tax warehouse,
- f) the applicant shall have a balance sheet audited by an independent auditor, starting from the year following issuance of the tax warehouse license, unless the authorised tax warehouse operator is not obliged by the act on accounting to have his/her/its books audited,
- g) the applicant must appoint a person responsible for securing the on-site conditions of an inspection and for keeping in touch with the state tax and customs authority.

Tax warehouses carrying out contract distillation activity only shall not have to fulfil the requirements – of the general rules – concerning record-keeping.

To ensure that all criteria of continuous operation are met the state tax and customs authority may require the approval and calibration of bonded storage tanks in the tax warehouse.

The state tax and customs authority may require the application of an official seal so that the excisable goods could not be moved from the closed system of the given equipment

⁴ Section 20 of ETL

by eliminating the metering instrument or without hurting the official seal; or otherwise the equipment could not be improperly used.

Allowances dedicated to the amount of excise security are not applicable, if the authorised tax warehouse operator is reckoned to be a risky taxpayer as determined in the Act XCII of 2003 on the Rules of Taxation (hereinafter referred to as RTL).

2. Simplified tax warehouse licence

Authorised simplified tax warehouse operators shall not have to fulfil the requirements – of the general rules – concerning record-keeping.

So that the applicant may obtain a simplified tax warehouse licence the following conditions shall be satisfied next to the general conditions⁵:

- a) all criteria for the production and safe storage of excisable products must be satisfied,
- b) the applicant shall have adopted a filing and documentation system permitting proper control of the quantity of raw materials used and excisable goods produced and/or stored,
- c) the applicant must appoint a person responsible for securing the on-site conditions of an inspection and for keeping in touch with the state tax and customs authority.

It is not ETL providing for the record-keeping obligations of the authorised simplified tax warehouse operators. Record-keeping obligations of the authorised simplified tax warehouse operators are determined by the Decree of the Ministry of Rural Development No. 27 of 2011 (IV.12.) on the uniform certification, registration and accounting procedures of wine products.

If authorised simplified tax warehouse operators meet the criteria set forth for small-scale wine producers based on a declaration made to the state tax and customs authority, they shall be exempt from the requirements for authorised tax warehouse operators. Producers, farmers who are reckoned to be risky taxpayers pursuant to RTL may not carry out their activities as small-scale wine producers even if all criteria to do so are met. In this case, they must have a simplified tax warehouse licence.

Authorised simplified tax warehouse operators reckoned to be risky pursuant to RTL shall provide excise security in the amount of HUF 250,000 so that they can carry on their activities.

3. Packaging licence

So that the applicant may obtain a packaging licence the following conditions shall be satisfied next to the general conditions:

- a) electronic record-keeping,
- b) detailed presentation of the activity planned to be carried out in the tax warehouse,

⁵ Paragraph 4 of Section 134 of ETL

- c) the applicant must appoint a person responsible for securing the on-site conditions of an inspection and for keeping in touch with the state tax and customs authority.

To ensure that all criteria of continuous operation are met the state tax and customs authority may require the approval and calibration of bonded storage tanks at the premises of the authorized packaging operator. The state tax and customs authority may also require the application of an official seal, as discussed above at the authorized tax warehouse operators.

Allowances dedicated to the amount of excise security are not applicable, if the authorized packaging operator is reckoned to be a risky taxpayer pursuant to RTL.

4. Licence for registered traders and registered consignors

So that the applicants (i.e. registered traders and registered consignors) may obtain a licence they shall have a balance sheet audited by an independent auditor, starting from the year following issuance of the license, regardless of whether the authorized entities are obliged to have their books audited or not.

Registered traders and registered consignors do not have to keep special records and supply any data therefrom to the authorities, given that all data related to the activity are available in the computer system of the EU.

The registered trader is only obliged to maintain an electronic register of the tax seals received.

5. Registered ad-hoc trader

As opposed to the general rules, an ad-hoc licence for registered traders may be obtained by entities fulfilling the criteria below:

- a) the applicant must not be adjudicated in bankruptcy or liquidation proceedings and shall not be under voluntary dissolution,
- b) the applicant shall have no customs or tax debts with the customs and the tax authority, or no social security contributions owed unless instalment or deferred payment was allowed,
- c) the applicant shall provide excise security in an amount equal to the tax content of the excisable goods received under tax suspension arrangement.

6. Excise licence

So that the applicant may obtain an excise licence the following conditions shall be satisfied next to the general conditions⁶:

- a) electronic record-keeping,
- b) in respect of petrol, gas oil, petroleum and fuel oil – with the exception if purchased by means other than in bulk – at least one storage tank of 500 cubic meters per facility, with the exception of the operator of the national public

⁶ Section 29 of ETL

- railway system if gas oil is solely sold for the operation of track vehicles, machines and equipment directly related to its principal activity of railway transportation,
- c) in respect of liquefied petroleum gas – excluding liquid hydrocarbons in cylinders of 25 kilograms or less – at least one storage tank built into or affixed to the ground of 300 cubic meters per facility,
 - d) in respect of alcohol products, beer, still and sparkling wine, other still and sparkling fermented drink, intermediate alcohol products, alcohol products and tobacco products at least one storage facility with 100 square meters of floor space,
 - e) if the activity is carried out in a small scale brewery to produce beer at least one storage facility with 20 square meters of floor place,
 - f) if the activity is carried out by using alcoholic products only in a tax warehouse operated by the same licenced entity carrying out this activity at least one storage facility with 20 square meters of floor place,
 - g) if non-bottled alcoholic products are traded at least fixed storage tank with a volume of at least 100 cubic meters,
 - h) in respect of lubricating oil at least one storage facility with 50 square meters of floor place.

Entities being able to certify that lubricating oil is imported from third countries or from other member states only for the purpose of own use may ask for an exemption from obligations relating to excise security and storage capacity to be granted by the state tax and customs authority.

Allowances dedicated to the amount of excise security are not applicable, if the excise licence holder is reckoned to be a risky taxpayer pursuant to RTL.

III) Applications for licences, authorization procedure

Authorization is subject to subjective, objective and warranty terms and conditions. To justify fulfilment of these terms, certificates and statements determined by the relevant provisions of ETL and IR shall be submitted to the state tax and customs authority along with the application.

As a rule, issues may be arranged in an electronic way in the authorization procedure. The application form no. **NAV_J31** titled “*Application for authorization of activities pursuant to ETL*” may be filed electronically. Provision of excise security may be reported by using form no. **NAV_J38** titled “*Application for acceptance of excise security provided/Application for the modification of excise security accepted or assessed in a different amount*”.

Under tax suspension arrangement the excise security for a consignment may be provided by the authorized tax warehouse operator, or – instead of the registered consignor – by the hauler (transporter), the consignee, the owner of the excisable product or some of them even jointly. In this case, the named entities may file their application on form no. NAV_J40 titled “*Application for the payment of excise security for a single consignment pursuant to Paragraph 12 of Section 18 of ETL*”.

Pursuant to the Government Decree No. 485/2015 (XII.29.) on the Competences and Jurisdictions of the National Tax and Customs Administration, the applications for an authorization are reviewed by the competent county (metropolitan) tax and customs directorate of the applicant's official seat, or in the absence thereof, the applicant's premises or in the case of individuals, the applicant's residence. With regard to large taxpayers having their seat on the administrative area of Budapest and the County of Pest, the Large Taxpayers Tax and Customs Directorate has exclusive competence to proceed.

During the course of the authorization procedure the competent tax and customs directorate – before issuing the authorization – verifies whether or not the conditions for it are met. In line with the rules of electronic communication and electronic services, the licence (authorization) shall be sent to the applicant by the state tax and customs authority electronically via the government portal.

Attachments

All the necessary attachments of an application shall be filed electronically in copies. Electronically or on paper, only original documents (not copies) are accepted of

- a) financial security payment,
- b) letter of declaration of guarantee,
- c) certificate of good conduct,
- d) certified specimen signature in the case of Simplified Accompanying Document (SAD), Wine Certification Document [BKO in Hungarian], or paper-based documents used during shutdown (except if the eligible person provides his/her signature in the presence of a representative of the tax and customs directorate or the producer, farmer wishes to use a special stamp.

Paper-based original documents – as integral part of the application – shall be made available to the state tax and customs authority personally or by post.

The certificate of good conduct should not be attached if the applicant requests the criminal records authority to send the certificate of good conduct directly to the state tax and customs authority, or if the latter requests that information and data should be asked from the criminal records authority for the purpose of using them in the authorization procedure.

Excise administrator

Professional qualifications in the administration of excise matters are the following⁷:

- a) intermediate vocational training qualification corresponding to an excise speciality course as laid down in Decree No. 40/2014 (XII.29.) of the Ministry of National Economy on Job Positions at the National Tax and Customs Administration Related to Professional Service and Law Enforcement Exam and on Certain Issues Related to the Basic and Intermediate Level Courses,
- b) intermediate vocational qualification certified by the Customs and Finance Guard School and the Institute of Training, Health and Culture of the National Tax and

⁷ Paragraph 1 of Section 6 of IR

Customs Administration or at least 3 years of professional service time spent on the excise field in the Customs Administration between 1 January 1998 and 31 December 2010, and following 31 December 2010 in the National Tax and Customs Administration as an administrator or a participant to a course.

Verifying conditions

The state tax and customs authority verifies whether the conditions are met or not and as such it may inspect the premises or establishments of applicants. The applicant shall hand over the following documents electronically during the on-site inspection to those acting on behalf of the state tax and customs authority:

- a) site plan,
- b) the description of the equipment and the process map of technology used [only in the case authorized tax warehouse operator and the authorized packaging operator]
- c) certification statement if required by law or the state tax and customs authority,
- d) depending on the activity, quantitative breakdown of the final product that can support data concerning the used and/or produced quantities [Point d) of Paragraph 3 of Section 2 of IR],
- e) sampling regulation for the purpose of exemption from tax payment obligation in the case of authorized tax warehouse operator,
- f) site plan of separated storage of inventories if taxed and untaxed excisable goods are stored at the same premises

In the case of applications for simplified tax warehouse licence only the site plan of premises intended to be used for carrying out the activity shall be presented or handed over electronically during the course of the on-site inspection.

During the course of the authorization procedure the state tax and customs authority shall prepare – in the framework of the on-site inspection – a technical specification of the equipment, storage tanks and the applied official seals in the tax warehouse (except for the simplified tax warehouse) and at the plant or establishment of the authorized packaging operator. This will then be sent to the authorized entity that is obliged to maintain the equipment in the condition recorded in the technical specification, to report any intended changes in the features, conditions thereof, and is responsible for the official seals used in the plant/establishment to remain intact.

IV) Revocation, suspension of a licence/authorization

Deficiencies jeopardizing inspectability of activities and the fulfilment of tax payment obligation

The state tax and customs authority continuously examines whether or not the conditions set at the time of issuing the authorization or at a later stage are met, just as it inspects under what circumstances the activities of the authorized entity are carried out. If any deficiency jeopardizes the inspectability of activities and the fulfilment of tax payment obligation, the state tax and customs authority shall suspend or revoke the authorization, depending on whether a deficiency may be remedied within 30 days or not.

Immediate revocation of a licence/authorization

If it is not possible to remedy the deficiency within 30 days from its detection, the state tax and customs authority revokes the licence/ authorization.

Suspension of a licence/authorization

If it is possible to remedy the deficiency within 30 days from its detection, the state tax and customs authority suspends the licence/ authorization until the deficiency is remedied, but at the most for 30 days. If the entity fails to remedy the deficiency, the state tax and customs authority revokes the licence/ authorization.

With the help of an electronic system the state tax and customs authority – as a circumstance giving rise to the suspension of the authorization – continuously examines whether the excise security provided by the authorized entity complies with the rules, and whether the amount covers the tax risk (taking also into account all eligible reductions). Should not sufficient amount of excise security be available for the entity to carry on its activity, the electronic system automatically blocks – in the case of the given premises, if the authorized entity has more than one – the EMCS related activity of the consignor, consignee, forwarding authorized entity (authorized tax warehouse operator, registered trader, registered consignor) under the tax suspension arrangement. By this measure the automated system refuses to forward the electronic report of receipt and to approve and forward the draft accompanying administrative document.

The state tax and customs authority urgently, but not later than 3 days after the action reviews whether it has been justified, taking also into account the possible evidences and facts presented in the meantime by the authorized entity (e.g. corrected documents, payment of additional excise security). If the automatic measure (blocking) is no longer justified, the state tax and customs authority automatically terminates the action.

During the course of the suspension of the authorization

- a) the state tax and customs authority – by also notifying the authorized entity – shall not approve and forward the electronic document filled in by the authorized entity in the computer system of the EU, and shall not send and forward any electronic document to the authorized entity; moreover shall not issue tax stamp to the authorized entity,
- b) excisable products may not be released into free circulation by the authorized entity, under tax suspension arrangement the authorized entity may not dispatch or receive excisable goods and may not trade in excisable goods already released into free circulation, and
- c) the authorized entity may not produce and/or use excisable products and may not carry out any activity that is exempt from tax payment obligation.

The suspension of the licence does not cover any activity listed under point c) if termination of the production would result in unjustified risks and/or damages from technical, security and disaster management perspectives. This aspect may be recorded in the licence upon request of the authorized entity.

Deficiencies not jeopardizing inspectability of activities and the fulfilment of tax payment obligation

If the deficiency detected does not jeopardize the inspectability of activities and the fulfilment of tax payment obligation, the state tax and customs authority shall first call on the authorized entity to remedy the deficiency; revocation of the licence shall follow only if the authorized entity fails to do so.

Examination of outstanding public dues

ETL specifically provides for the revocation of the licence with regard to outstanding public dues.

In case public dues are not paid and/or an entity has outstanding public dues the state tax and customs authority shall revoke the authorization if:

- a) the authorized entity has not fulfilled its obligation in any tax type to contribute to the public revenues within 60 days from the due date of the contribution (tax), provided that the due amount exceeds HUF 100,000, except if the due amount has been paid by the authorized entity until commencement of the administrative procedure for the revocation of the licence or has been in receipt of a permission for payments in instalments or for deferred payment, or
- b) the outstanding amount of the payment obligation of the authorized entity assessed in a final decision exceeds 10% of the due amount in the examined period and the reduction of the tax penalty is excluded by RTL due to the conduct of the taxpayer.

National Tax and Customs Administration