

# TAX INFORMATION

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June 2010



## THE NEW PORTUGUESE EXCISE DUTIES CODE

### 1. Introduction

The new Excise Duties Code (CIEC), which comes into force 30 days after its publication, was published as a schedule to Decree-Law 73/2010 of 21 June. This new provision updates the legislation on excise duties, which are harmonised at European Union level and imposed on energy and petroleum products, tobacco, alcohol and alcoholic beverages.

This subject matter was first codified in Portuguese law by Decree-Law no. 566/99, of 22 December, which is normally identified by the acronym "CIEC" so, for the sake of simplicity, we will refer to the newly published legislation (Decree-Law 73/2010) as the "new CIEC".

By publishing the new CIEC, the legislator intends to transpose Council Directive 2008/118/EC of 16 December 2008 into Portuguese law. This Directive repealed and replaced the previous Council Directive 92/12/EEC of 25 February 1992, normally referred to as the Horizontal Directive on Excise Duties, given that – in contrast to so-called Vertical Directives which are applicable to each type of product – it applies to all products subject to excise duties.

Even though the changes are not that far-reaching, the decision to publish a new CIEC will possibly be justified by the fact that the previous CIEC was subject to multiple amendments throughout its ten-year life span that were fundamentally based on State budget laws published during this period.

Structurally, therefore, the new CIEC will continue to have a general part containing

the common provisions that apply to all products subject to excise duty and a special part containing the specific provisions applicable to each group of products.

### 2. Intra-Union Movement

A computerised system has been adopted for the intra-Union movement of products under duty suspension.

This new system also supports the control of the respective movements and is normally referred to as EMCS (Excise Movement and Control System). The technical specifications for EMCS are set out in Commission Regulation (EC) No 684/2009 of 24 July 2009.

Given that the Portuguese customs services were pioneers in the use of information technology in this area having established the mandatory issue and verification of the Accompanying Administrative Document (AAD) by electronic means in 2004, it is surprising that Portugal now features in the group of Member States that will only have the full new system in 2011.

It is hoped (and desired) that, by allowing for more pro-active intervention by the customs authorities of the Member States, the new technical framework for movements under excise duty suspension arrangements will help to diminish the tax risk of authorised dispatch warehouse, that respond objectively through the regularity of intra-Union movements under excise duties suspension arrangements, despite the transporter being the last operator in contact with the merchandise before its delivery to the consignee.

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### 3. New statutory figures

The figures of "registered consignee", "temporary registered consignee" and "registered consignor" have been created by statute.

The figure of "registered consignee" originates from the previous figure of "registered operator" and only involves a name change. In fact, the existing system for obtaining the status and for the rights and obligations of the holder remain unchanged. Besides, the law expressly states (in Article 2 of the introductory legislation) that current holders of the status of registered operator will acquire the status of "registered consignee" without any further formalities. The new figure of "temporary registered consignee" originates from "non-registered operator" and does not differ from that in any respect.

The status of "authorised consignor" has no corresponding description in the previous Code. Its purpose is to allow any importer of products subject to excise duty not only to declare the goods immediately free for circulation and consumption but also, alternatively, to declare them free for circulation and to dispatch them to an authorised warehouse.

This warehouse may be in Portugal or another Member State. Alternatively, the warehouse can dispatch the goods to an authorised consignee or to entities that benefit from certain types of exemptions, if in either of these two cases the consignees are located in another Member State.

Until now, this subject matter has been regulated by administrative means and, under this approach, aspects linked to guarantees for products that circulate under excise duty suspension arrangements between the place of import and tax warehouses feature strongly.

### 4. Periods for Administrative Appeal and Judicial Review

Article 13 of the new CIEC (which corresponds to Article 11 of the previous CIEC) retains the requirement that the tax be paid, should one wish to file an administrative appeal or application for judicial review within the respective periods of 120 or 90 days provided for in the Portuguese Tax Processes and Procedures Code (CPPT). Indeed, even if the tax is guaranteed and 30 days have passed since the date on which the period for voluntary payment ended, the guarantee is invoked if the tax has not been paid in the meantime.

As such, the administrative appeal or judicial review must be filed within a period of 30 days, calculated from the date on which the period for voluntary payment ended, if it is intended that the tax only be guaranteed during the period in which the proceedings run their course, either in the administrative phase or in the judicial phase. Once again, in the end the legislator has not used the new CIEC to bring this legislation into line with the periods provided for in the CPPT for filing an administrative appeal or application for judicial review.

### 5. Tax on Alcohol and Alcoholic Beverages (IABA)

Small distilleries, where production benefits from a 50% reduction in the applicable IABA taxes, will become subject to more stringent control procedures, including the obligation to register the raw materials used and the resultant products. The production unit must still remain sealed in case of seasonal production downtime, which happens in most cases of aguardente production from grape husks.

### 6. Tax on Tobacco (IT)

Small distilleries, where production benefits from a 50% reduction in the applicable IABA taxes, will become subject to more stringent control procedures, including the obligation to register the raw materials used and the resultant products. The production unit must still remain sealed in case of seasonal production downtime, which happens in most cases of aguardente production from grape husks.

### 7. Tax on Energy and Petroleum Products (ISP)

The inclusion of tax rates (presented in the traditional form of intervals of minimum and maximum figures) in the new CIEC is to be applauded. However, this does not go as far as would be logically expected as the table containing the rate intervals of main products (petrol, diesel, oils and fuel oils) does not contain the rate intervals of lesser products such as lubricants and LPG fuel, when there is no reason for such an approach given that the rates of some of these and others are specifically fixed by way of ministerial order by the same members of government.

### 8. Regulation of the new CIEC

To conclude, we hope that the regulation of the new CIEC will be framed so as to avoid the bureaucracy that is found, for instance, in the case of coloured and marked diesel. In this case, the latest electronic card with chip technology exists side by side with the procedure for issuing millions of low value paper invoices, when everything appears to point towards the system of "mass sales".

Lisbon, 22 June 2010  
17/2010

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