

**Regulation of Anguilla: 26/2019**

Gazette Dated: 19<sup>th</sup> September, 2019

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EXCISE TAX ACT, 2019 (ACT NO. /2019)

**EXCISE TAX REGULATIONS, 2019**

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Regulations made by the Governor in Council and approved by Resolution of the House of Assembly under Section 30 of the Excise Act, 2019 (Act No. /2019).

PART 1

PRELIMINARY

1. Interpretation

PART 2

REGISTRATION OF MANUFACTURERS AND APPROVAL OF WAREHOUSES

2. Applications for registration under the Act
3. Applications for approval of warehouses
4. Requirements for approval of warehouses
5. Operating an approved warehouse

PART 3

MANUFACTURE AND REMOVAL OF EXCISABLE GOODS FROM APPROVED WAREHOUSES

6. Records of excisable goods removed from a warehouse
7. Permission to remove goods to an offsite warehouse

PART 4

OFFENCES AND PENALTIES

8. Prohibition on dilution of alcoholic beverages
9. Offences in relation to warehouses
10. Penalty for failing to maintain weights, scales, etc.
11. Penalty for impeding or attempting to impede audit

PART 5

OBJECTIONS AND APPEALS

12. Reviewable decisions

PART 6

RECORDS, RETURNS AND AUDITS

- 13. Books and records to be kept
- 14. Audits

PART 7

THE PAYMENT OF INTEREST

- 15. Interest on late payment
- 16. Citation and commencement

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## EXCISE TAX ACT, 2019 (ACT NO. /2019)

**EXCISE TAX REGULATIONS, 2019**

In exercise of the powers conferred upon him by section 30 of the Excise Tax Act, 2019, (Act No. /2019), the Governor in Council makes the following Regulations—

## PART 1

## PRELIMINARY

**Interpretation**

1. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Excise Tax Act, 2019;

“tax-paid excisable goods” means—

- (a) excisable goods in respect of which excise tax has been paid; and
- (b) excisable goods manufactured in Anguilla that have been entered for home use but for which excise tax has not yet been paid because the due date for payment under section 11(1) of the Act has not arrived;

“tax-unpaid excisable goods” means excisable goods that are not tax-paid excisable goods.

(2) A word or phrase not specifically defined in these Regulations but defined in the Act has the meaning assigned to it in the Act, whether that meaning applies for the purposes of the entire Act or only for part of the Act.

## PART 2

## REGISTRATION OF MANUFACTURERS AND APPROVAL OF WAREHOUSES

**Applications for registration under the Act**

2. For the purposes of an application by a manufacturer for registration under section 7 of the Act, in addition to any other information required by the Comptroller, the application must be accompanied by the following—

- (a) documents evidencing the manufacturer’s intention to operate a genuine manufacturing facility, which may include—
  - (i) copies of the articles of incorporation or similar founding documents,

- (ii) the names, addresses, qualifications, and other identifying information in relation to the directors and senior employees of the manufacturer,
- (iii) names and identifying details of the accountants, lawyers, and agents, if any, of the manufacturer;
- (b) the particulars of imported and other goods that will be used in the manufacturing or other operations;
- (c) information regarding the nature of the manufacturing process or other operations;
- (d) evidence of the manufacturer's ability to maintain the books and records required under section 12 of these Regulations;
- (e) a procedures statement or manual, acceptable to the Comptroller, setting out how tax-unpaid excisable goods will be handled, secured, tracked, and monitored while in the warehouse, and specifying the persons, or classes of person, who will have access to the goods, and under what conditions; and
- (f) an application for approval of the manufacturing facility as an approved warehouse.

#### **Applications for approval of warehouses**

3. An application for approval of a warehouse under section 9(2) of the Act must be supported by a site plan of the premises clearly showing details of—

- (a) the configuration and secure perimeters of the manufacturing facility;
- (b) the location and physical details including, *inter alia*, size and materials of construction, of the area to be designated as the warehouse; and
- (c) the warehouse's external security including, *inter alia*, fences, and internal security controls including entries, exits, alarms and lighting fixtures.

#### **Requirements for approval of warehouses**

4. (1) For the purposes of section 9(3) of the Act, the following requirements must be met in order for a warehouse of a registered manufacturer to be approved—

- (a) the warehouse must be controlled or operated by the manufacturer;
- (b) the manufacturer must be able to specify at any time—
  - (i) the nature of the goods manufactured or stored in the warehouse,
  - (ii) the estimated value of those goods, and the manufacturer's estimated excise tax liability in respect of a subsequent removal of those goods from the warehouse, and
  - (iii) the expected method of disposal of the goods by way of local sales, export sales, use in the manufacture of other excisable goods, or other means of disposal, including an estimate of the anticipated percentages of each type of disposal;
- (c) the Comptroller must be satisfied that the warehouse is secured in a manner that prevents unauthorised access to tax-unpaid excisable goods and enables all movements of excisable goods into or out of the warehouse to be monitored.

(2) The registered manufacturer must provide proof that tax-paid excisable goods will not be stored in the warehouse except as allowed under section 5(2).

(3) Subsection (2) does not prevent the Comptroller from approving only part of particular premises as an approved warehouse if that part of the premises is clearly delineated and secured to the satisfaction of the Comptroller.

#### **Operating an approved warehouse**

5. (1) Only the following persons may enter a warehouse at which tax-unpaid excisable goods are stored—

- (a) if the manufacturer is an individual, the manufacturer;
- (b) an officer or employee of the manufacturer, or of a carrier delivering or removing goods from the warehouse;
- (c) the Comptroller, or an officer to whom the Comptroller has delegated such powers under the Act;
- (d) subject to written approval of the Comptroller given to the registered manufacturer, whether on a one-off or ongoing basis, a person (if the person is an individual), or an officer or employee of the person, if the person has been subcontracted by the registered manufacturer to provide maintenance, cleaning, installation, or other services in respect of the business carried on by the registered manufacturer; and
- (e) other persons to whom the Comptroller has given written approval to enter such premises.

(2) Tax-paid excisable goods may not be stored in an approved warehouse unless—

- (a) the warehouse is a manufacturing facility and the goods are to be used as raw materials in manufacturing other excisable goods; and
- (b) the tax-paid excisable goods to be used as raw materials are separately stored and secured away from the place where tax-unpaid excisable goods are stored.

(3) A registered manufacturer must provide and maintain at each of the manufacturer's approved warehouse—

- (a) adequate lighting;
- (b) correct weights and scales; and
- (c) all labour;

necessary for—

- (d) weighing excisable goods received into, excisable goods manufactured in, and excisable goods removed from the approved warehouse; and
- (e) taking stock of all excisable goods in the warehouse.

(4) The manufacturer must prepare and retain any records and documentation required by Comptroller in relation to the deposit, keeping, manufacture or, securing of excisable goods or removal of excisable goods from the warehouse.

(5) The warehouse, and any records the registered manufacturer is required to keep, are subject to inspection by the Comptroller at any time and without prior notice.

### PART 3

#### MANUFACTURE AND REMOVAL OF EXCISABLE GOODS FROM APPROVED WAREHOUSES

##### **Records of excisable goods removed from a warehouse**

6. (1) Tax-unpaid excisable goods may only be removed from a warehouse with authorisation from the Comptroller and in accordance with the terms and conditions imposed by the Comptroller on the registered manufacturer from whose warehouse the goods are to be removed.

(2) A manufacturer who is registered, or required to be registered, under the Act—

- (a) may store excisable goods on which excise tax has not yet been paid only in an approved warehouse;
- (b) may enter excisable goods for home use only from an approved warehouse; and
- (c) must complete, at the time of entry for home use, such records, forms, or documents, in such manner and form, as the Comptroller requires in relation to the entry.

(3) For the purposes of section 6(2)(c) above, in addition to any documents or forms required by the Comptroller under that section, a registered manufacturer must prepare and retain the following records—

- (a) in relation to all excisable goods manufactured in Anguilla by the registered manufacturer—
  - (i) documentation which evidences the quantities of raw materials and packaging materials used, brought into or removed from the warehouse of the registered manufacturer,
  - (ii) the quantity and type of excisable goods produced, transferred or disposed of from the warehouse of the registered manufacturer,
  - (iii) the quantity and type of excisable goods which are packaged in the warehouse of the registered manufacturer,
  - (iv) details of the disposition of, including invoices and bills of lading, the packaged excisable goods from an approved warehouse and the quantity upon which excise tax was paid,
  - (v) documentation of the quantity and type of excisable goods exported from Anguilla,
  - (vi) particulars of any claim for refund of excise tax under section 14, 15 or 16 of the Act;
- (b) in relation to all imported excisable goods used by the registered manufacturer in the manufacture of other excisable goods—
  - (i) documentation which evidences the quantities of raw materials and packaging materials used, brought into or removed from the warehouse of the registered manufacturer,

- (ii) the quantity and type of excisable goods produced, transferred or disposed of from the warehouse of the registered manufacturer,
- (iii) the quantity and type of excisable goods which are packaged in the warehouse of the registered manufacturer,
- (iv) details of the disposition of, including invoices and bills of lading, the packaged excisable goods from an approved warehouse and the quantity upon which excise tax was paid,
- (v) documentation of the quantity and type of excisable goods exported from Anguilla,
- (vi) particulars of any claim for refund of excise tax under section 14, 15 or 16 of the Act.

(4) The Comptroller may specify that a manufacturer may remove tax-unpaid excisable goods from a warehouse only in the physical presence of, and under the supervision of, an officer of the Comptroller.

(5) Requirements relating to the removal of tax-unpaid excisable goods under subsection (4) may include a “two-key” system under which the officer and the registered manufacturer each hold keys to the area of the warehouse in which the tax-unpaid excisable goods to be removed are held, and both keys are required to open any lock that secures entry into that area.

#### **Permission to remove goods to an offsite warehouse**

7. (1) A registered manufacturer may apply to the Comptroller to remove tax-unpaid excisable goods from an approved warehouse to another approved warehouse.

(2) The Comptroller may approve an application under subsection (1), subject to such terms and conditions as the Comptroller may specify, if—

- (a) both approved warehouses are operated and controlled by the registered manufacturer; and
- (b) the registered manufacturer enters into an agreement with the Comptroller regarding the means by which the goods will be transported between the approved warehouses, and specifying the security arrangements for ensuring that the goods reach their destination.

(3) An approval to remove tax-unpaid excisable goods from one approved warehouse to another may be a continuing approval or a one-off approval.

(4) Except in situations covered by section 5(2), permission may not be given under this section to remove tax-unpaid excisable goods to a warehouse at which tax-paid excisable goods are stored.

(5) Where a registered manufacturer removes tax-unpaid excisable goods from an approved warehouse (“the first warehouse”) to another approved warehouse (“the second warehouse”) in accordance with an approval given under this section, and in compliance with the conditions set out in the agreement referred to in subsection (2)(b)—

- (a) for the purpose of determining if and when the goods are entered for home use, the removal from the first warehouse is treated as if it did occur and the removal (if any) from the second warehouse is treated as if it were the first removal of those goods from a warehouse; and
- (b) if the registered manufacturer is unable to prove to the satisfaction of the Comptroller that the goods which left the first warehouse were the same goods, if any, that were delivered to the second warehouse, paragraph (a) does not apply.

## PART 4

## OFFENCES AND PENALTIES

**Prohibition on dilution of alcoholic beverages**

8. (1) A manufacturer who, otherwise than in the process of manufacturing other excisable goods in an approved warehouse, dilutes alcoholic beverages falling under Customs Tariff Heading 2207 and 2208 after recording or declaring the quantity manufactured for the purposes of determining the manufacturer's excise tax liability, commits an offence under these regulations and is liable to—

- (a) an administrative penalty not exceeding \$10,000; or
- (b) on summary conviction, a fine of \$25,000 or imprisonment for one year, or both.

(2) For the avoidance of doubt—

- (a) diluting alcoholic beverages falling under Customs Tariff Heading 2207 and 2208 and then repackaging, or re-sealing, the beverages constitutes the manufacture of other excisable goods; and
- (b) diluting alcoholic beverages when they are served in glasses or other containers in which they are sold for consumption at the time and place where they are served, for example, by mixing spirits with carbonated drinks or fruit juices, or mixing wine with fruit juices, does not constitute manufacture and is not a contravention of this section.

**Offences in relation to warehouses**

9. (1) A manufacturer who stores tax-paid excisable goods in an approved warehouse in contravention of section 5(2), or who fails to keep tax-paid excisable goods that are raw materials separated from tax-unpaid excisable goods as required by section 5(2)(b), is guilty of an offence under these Regulations.

(2) A registered manufacturer who fails to adequately maintain security at an approved warehouse so as to prevent access by unauthorised persons to excisable goods stored in the warehouse is guilty of an offence under these Regulations.

(3) A person who is liable to an offence prescribed under this section is liable to—

- (a) an administrative penalty not exceeding \$5,000; or
- (b) on summary conviction, a fine not exceeding \$10,000.

**Penalty for failing to maintain weights, scales, etc.**

10. A registered manufacturer who fails to maintain adequate lighting, weights and scales, etc, as required by section 6(3) is guilty of an offence and is liable to—

- (a) an administrative penalty of \$5,000; or
- (b) on summary conviction, a fine not exceeding \$10,000.

**11. Penalty for impeding or attempting to impede audit**

A person who without lawful excuse impedes or attempts to impede the comptroller, or someone authorized by the comptroller, in the conduct of an audit under these regulations commits an offence and is



liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding one year, or both.

## PART 5

### APPEALS AND OBJECTIONS

#### Reviewable decisions

12. The following decisions made under these regulations are reviewable decisions for the purposes of section 22 of the Act, and are subject to the appeals and objections provisions of Part 6 of that Act—

- (a) a decision under section 6 not to authorise the removal of tax-unpaid excisable goods from an approved warehouse, or to impose terms and conditions on the removal;
- (b) a decision under section 7 not to authorise the removal of tax-unpaid excisable goods from one approved warehouse to another, or to impose terms and conditions in relation to the removal;
- (c) a decision to impose an administrative penalty under any provision of the Act or under Part 4 of these regulations.

## PART 6

### RECORDS, RETURNS AND AUDITS

#### Books and records to be kept

13. (1) For the purposes of the Act, these regulations and any other related enactment, a registered manufacturer is required to maintain in Anguilla such accurate accounts, documents, books and records as are necessary and relevant to explaining the manufacturer's excise tax and returns and supporting the manufacturer's determination of its excise tax liabilities under the Act and such accounts, documents, books and records must be maintained by the manufacturer whether in electronic or other form in English for a period not less than 7 years after the end of the accounting period to which they relate.

(2) Without limiting subsection (1), a registered manufacturer must maintain whether in electronic or other form, and be able to produce on demand, such records as are required to evidence at any time—

- (a) all excisable goods that have entered each approved warehouse of the manufacturer;
- (b) all excisable goods that have been removed from the warehouse;
- (c) all other goods that have entered and been removed from the warehouse, if those goods are raw materials used in the manufacture of excisable goods at the warehouse, or are used to contain, store, label, or measure excisable goods held or manufactured at the warehouse;
- (d) all excisable goods stored in the warehouse (including the physical location of the goods within the warehouse).

(3) The records referred to in subsection (2) must include appropriate, relevant, and accurate links to production and sales records, and to excise tax returns.

**Audits**

14. (1) The Comptroller may at any time, for reasons to be recorded in writing and communicated to the manufacturer, conduct, or cause to be conducted, audits on the operations of the manufacturer.

(2) The manufacturer is required to fully cooperate with such audits by granting free access to the warehouse or any other place, property, documents, books, records, returns and or computers, and to allow copies or extracts to be taken as required by the comptroller.

(3) The manufacturer shall be given a copy of the audit report conducted in pursuance of subsection (1) and shall be allowed 14 days to make representation on the findings, if so desire.

**PART 7****THE PAYMENT OF INTEREST****Interest on late payments**

15. (1) Where a person, the comptroller or the comptroller of customs is required to pay interest under section 14 or any other provision of the Act then, the rate of interest payable would be one percent of the amount unpaid for each month or part of a month during which the balance due remains unpaid.

**Citation and commencement**

16. (1) These Regulations may be cited as the Excise Tax Regulations, 2019.

(2) These Regulations come into operation on 1 October, 2019.

Made by the Governor in Council this 19 day of September 2019



Timothy J. Foy, OBE  
GOVERNOR OF ANGUILLA