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Regulations

entitled

Tobacco Products Tax Regulations 2006

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The Revenue Commissioners, in exercise of the powers conferred on them by section 83 of the Finance Act 2005 (No.5 of 2005), hereby make the following regulations:

PART 1
PRELIMINARY AND GENERAL

Citation.

1. These Regulations may be cited as the Tobacco Products Tax Regulations 2006.

Commencement.

2. These Regulations come into operation on 1 June 2006.

Interpretation.

3. (1) In these Regulations–

“Act of 2001” means the Finance Act 2001 (No. 7 of 2001);

“Act of 2005” means the Finance Act 2005 (No. 5 of 2005);

“approved” means approved by the Commissioners;

“authorised warehousekeeper” means a person authorised by the Commissioners to produce, process, hold, receive or dispatch in the course of business, tobacco products under a suspension arrangement;

“category”, in respect of a tobacco product, means its identification under such headings as the Commissioners may from time to time direct for the purposes of the returns and accounts required under these Regulations;

“cigarettes” and “cigars” have the same meanings as they have in section 71(1) of the Act of 2005;

“Commissioners” means the Revenue Commissioners;

“importer” means any person who imports tobacco products for commercial purposes;

“manufacturer” means an authorised warehousekeeper approved to produce tobacco products;

“materials” means tobacco in any form and any other substance to be used for incorporation in tobacco products;

“proper officer”, in relation to any duty or function referred to in these Regulations, means an officer assigned responsibility for that duty or function in any particular case;

“records” means any books, accounts, documents or other recorded information including information in a computer or in other non-legible form;

“refuse” means tobacco refuse derived from manufacturing operations;

“release for consumption” means—

- (a) any departure, including irregular departure, from a suspension arrangement,
- (b) any manufacture, including irregular manufacture, of tobacco products outside a suspension arrangement, or
- (c) any importation of tobacco products, including irregular importation of tobacco products, where such tobacco products have not been placed under a suspension arrangement;

“specified tobacco products” means cigarettes and fine-cut tobacco for the rolling of cigarettes and any other tobacco products in respect of which an order under section 73 of the Act of 2005 relates;

“suspension arrangement” means an arrangement under which tobacco products are produced, processed, held or moved, tobacco products tax being suspended;

“tax representative” means a person, established in the State, who is authorised by the Commissioners to act in the State as an agent on behalf of persons delivering excisable products from another Member State;

“tax stamp” means a label issued by the Commissioners under section 73 of the Act of 2005 for the purpose of collecting tobacco products tax;

“tax warehouse” means a premises or place approved by the Commissioners where tobacco products are produced, processed, held, received or dispatched under a suspension arrangement by an authorised warehousekeeper in the course of business;

“tobacco products” means cigarettes, cigars, fine-cut tobacco for the rolling of cigarettes or other smoking tobacco except where such products contain no tobacco and are either—

(a) used exclusively for medical purposes, or

(b) are products commonly known as herbal cigarettes or herbal smoking mixtures ;

“working day” means any day not being a Saturday, Sunday or public holiday.

(2) Unless the contrary intention appears, a word or expression used in these Regulations has the same meaning as it has in Chapter 3 of Part 2 of the Act of 2005.

PART 2
WAREHOUSING

Applications for approval.

4. (1) Every application for approval of any premises or place as a tax warehouse and of a person as an authorised warehousekeeper under section 109 of the Act of 2001 shall -

(a) be in such form and manner as the Commissioners may require,

(b) contain the particulars specified in Schedule 1, and

(c) contain such other particulars as the Commissioners may from time to time require.

(2) A separate application shall be made in respect of each of the premises and places for which an applicant requires approval.

(3) In respect of each application for approval under this Regulation, the applicant shall show to the satisfaction of the Commissioners that the premises or place concerned is so designed, constructed and situated as to ensure the security of any tax chargeable on tobacco products produced or held in such premises or place.

Restrictions may apply to terms of approval.

5. (1) The Commissioners may, under the terms of any approval granted in respect of a tax warehouse, limit the extent of that approval.

(2) An authorised warehousekeeper, except where otherwise approved may in respect of his or her tax warehouse only hold tobacco products there.

(3) The manufacture of tobacco products shall not take place in a tax warehouse unless the approval granted in respect of that tax warehouse expressly allows such manufacture. The extent of any production or processing that may be allowed in a tax warehouse may also be limited under the terms of the approval.

Notification of changes to particulars of application.

6. (1) An authorised warehousekeeper shall give at least 10 working days advance written notice to the Commissioners, unless in any special circumstances the Commissioners shall dispense with such notice, of his or her intention to –

(a) to make any alteration affecting any of the particulars contained in an application for approval under Regulation 4, or

(b) to cease production, processing or holding of any tobacco products in a tax warehouse,

and the Commissioners may, subject to compliance with such conditions as they may think fit to impose, vary an approval accordingly.

(2) An authorised warehousekeeper shall, following the completion of any alteration referred to in paragraph (1), immediately notify the proper officer of such completion.

(3) Where an authorised warehousekeeper is a company, the approval of such warehousekeeper and the tax warehouse shall cease upon the change of effective ownership or control of such company.

Securing tobacco products and stock control in tax warehouse.

7. An authorised warehousekeeper shall –

(a) take all necessary steps to ensure that there is no unauthorised access to the tobacco products in a tax warehouse,

(b) produce promptly to a proper officer, if requested to do so by that officer, any tobacco products held in the tax warehouse,

(c) take stock of all tobacco products in the tax warehouse as required by the Commissioners,

(d) immediately notify the proper officer of –

- (i) any discrepancy concerning stocks of tobacco products in a tax warehouse,
- (ii) any discrepancy concerning tobacco products in the course of movement to a tax warehouse,

and retain, if required to do so by a proper officer, any tobacco products concerned for examination.

Deposit in tax warehouse.

8. Before being deposited in his or her warehouse an authorised warehousekeeper shall notify the proper officer in writing of the weight per unit of quantity of each brand, type and size of pack of tobacco products other than cigarettes to be so deposited.

Marking and storage of tobacco products.

9. (1) A manufacturer of any tobacco products or an authorised warehousekeeper shall ensure that, before products are stored in his or her warehouse, each package in which they are contained shall be indelibly marked with indications of the type, brand and quantity of tobacco products contained in the package.

(2) A warehousekeeper shall ensure that all packages of tobacco products in his or her warehouse are arranged and stored in such a manner as to allow easy and safe access to them and the taking of an account of them.

Removal from tax warehouse.

10. (1) Tobacco products may be removed from a tax warehouse only –

- (a) on payment of the proper tax in accordance with an arrangement approved for such payment,

(b) under a suspension arrangement, or

(c) where repayment or remission has been granted under section 77 of the Act of 2005 or section 104 or 105 of the Act of 2001.

(2) Where tobacco products are removed from a tax warehouse without payment of tobacco products tax the Commissioners may impose conditions covering such removal.

(3) Before any consignment of tobacco products is delivered from a warehouse, the warehousekeeper concerned shall complete and retain a record of deliveries, showing the following particulars:

(i) the date of the delivery;

(ii) the name and address of the person to whom it is to be delivered;

(iii) the quantity of each product to be delivered, by brand, type and size of retail pack.

Warehouse to warehouse deliveries within the State.

11. (1) Where tobacco products are removed from a tax warehouse for delivery under a suspension arrangement to another tax warehouse in the State, the authorised warehousekeeper who consigns the products shall complete a delivery form approved by the Commissioners in respect of each consignment.

(2) The authorised warehousekeeper who receives the tobacco products shall endorse and return the prescribed form promptly to the consignor.

(3) The Commissioners may authorise that, instead of the approved form referred to in paragraph (1), a commercial document bearing the same information, may be used.

Tax paid on tobacco products returned to tax warehouse.

12. Tobacco products on which tax has been paid may be returned to a tax warehouse, and the tax paid refunded or remitted, where the proper officer is satisfied that -

(a) such tobacco products have become unfit for use,

(b) the tobacco products are returned for the purpose of export or shipment for use as stores, or

(c) exceptional circumstances apply and they consider it proper to so allow.

PART 3

REQUIREMENTS FOR MANUFACTURERS OR IMPORTERS

Conditions and requirements.

13. Without prejudice to any other provision, a manufacturer of tobacco products shall comply with such conditions and requirements as the Commissioners may reasonably impose in relation to such production.

Disposal of refuse.

14. A manufacturer shall give the proper officer at least 24 hours' notice in writing on a form provided by the Revenue Commissioners of his or her intention to dispose of refuse and shall dispose of the refuse in the manner stated by him or her on the form.

Declaration of retail selling price.

15. A manufacturer or importer of cigarettes shall declare in writing such information relating to the price at which they are sold by retail and any proposed changes in that price.

Samples.

16. An officer may, without payment, take such samples of tobacco products, materials or refuse in a factory or warehouse as he or she may require for the purposes of the Act of 2005 and these Regulations.

PART 4
TAX STAMPS

Initial application for tax stamps.

17. (1) A person who intends to purchase tax stamps for the first time, for the payment of tobacco products tax on specified tobacco products, shall apply to the Commissioners at least 2 months in advance of when he or she wishes to have such stamps first issued.

(2) Applications under paragraph (1) shall be in such form and manner as the Commissioners may require.

(3) A person to whom paragraph (1) relates shall notify the Commissioners of any change to the particulars contained in any application made by such person pursuant to that paragraph.

Ordering stamps.

18. (1) Where a person wishes to purchase tax stamps he or she shall submit an order for such stamps in such form and manner as the Commissioners may require.

(2) The Commissioners may require that tax stamps be ordered on a periodic basis.

Issue of stamps.

19. Tax stamps shall be issued to purchasers at such places and times as the Commissioners may decide.

Storage of stamps.

20. The Commissioners may, subject to such conditions as they may consider necessary, allow tax stamps to be stored under their control in the premises of a purchaser.

Form of tax stamp.

21. The form of a tax stamp on a packet of tobacco products shall include –

- (a) subject to paragraph (b), a continuous background printing of the words 'The Revenue Commissioners' and 'Na Coimisinéirí Ioncaim',
- (b) a representation of the (Official) Irish Harp containing 12 strings in a vertical plane encircled by a ring on which is printed the words 'Ireland', 'Éire', 'Excise Duty' and 'Dleacht Mháil',
- (c) three lines of encoding printed in black containing such combination of characters as the Commissioners have authorised for the tobacco products to which the stamp relates, and
- (d) such security or other features as the Commissioners may from time to time direct.

Affixing of tax stamps.

22. (1) Tax stamps shall be affixed to the packaging containing tobacco products to which they relate in a manner approved by the Commissioners underneath any transparent final wrapper.

(2) Tax stamps shall be affixed on the packaging containing tobacco products to which they relate in whatever position the Commissioners may from time to time specify to purchasers and the Commissioners may specify different positions in respect of different sizes, types or brands of such tobacco products.

(3) Tax stamps shall be affixed in such a manner that the level of adhesion should be sufficient to ensure that any attempt to subsequently remove the stamp will result

in damage to the stamp itself or to the packaging material which contains the tobacco products.

Records and accounts of stamps purchased.

23. (1) A purchaser of tax stamps shall keep, in respect of each retail price category, records and accounts of –

- (a) stamps ordered,
- (b) deliveries of stamps to the purchaser's premises for storage under the Commissioners' control,
- (c) stamps issued to the purchaser from such storage or directly,
- (d) stamps affixed to packages,
- (e) stamps in respect of which tobacco products tax was paid on release for consumption,
- (f) stamps in respect of which remission or repayment has been allowed,
- (g) stocks of unused stamps, and
- (h) amounts of tobacco products produced by brand and package size,

and shall keep all such other records and accounts as the Commissioners may from time to time direct and shall retain any documents relating to any of the foregoing matters.

(2) All records and accounts required by these Regulations shall be kept up to date.

(3) The records and accounts required to be kept and any document, required to be retained, by these Regulations shall–

- (a) in the case of a manufacturer in the State, and save as the Commissioners may otherwise allow and subject to compliance with such conditions as they may think fit to impose, be kept at the factory to which they relate, and
- (b) in the case of an importer or a tax representative be kept at his or her principal place of business in the State or such other place as the Commissioners may from time to time allow.

PART 5

RECORDS

Records to be kept.

24. (1) Every authorised warehousekeeper shall keep, in such form as the Commissioners may require, all records specified in Schedule 2, books, accounts and documents and make them available for inspection by any proper officer at his or her request at any reasonable time.

(2) An authorised warehousekeeper who is in overall charge and control of a tax warehouse shall make the returns and accounts for that warehouse that are required for the purposes of Regulations 27 to 30 in respect of—

- (a) his or her own business as an authorised warehousekeeper, and
- (b) the business of any other authorised warehousekeeper who operates out of that warehouse,

and any person to whom paragraph (b) relates shall supply information to the warehousekeeper who makes the return so as to enable the latter to duly make the return.

Alterations to records.

25. (1) In respect of all records required to be kept by or under these Regulations, a person shall not —

- (a) obliterate any entry,
- (b) make any entry that is untrue in any particular, or
- (c) alter or cancel any entry except for the purpose of correcting an error.

(2) Any alterations or cancellations for the purpose of correcting an error shall only be made in a manner that does not render illegible, in part or in whole, the original entry.

Preservation of records.

26. Except where the Commissioners may otherwise allow or require, the records required to be kept by or under these Regulations shall—

- (a) be preserved for a period of not less than 6 years from the date of the last entry in such records, and
- (b) be kept either at the registered place of business, or tax warehouse of the warehousekeeper, or at such other place as the Commissioners may in any case allow.

Consumption account.

27. An authorised warehousekeeper shall keep an account of all tobacco products delivered from the tax warehouse, for the relevant accounting period, showing, for each category of tobacco product, the quantities delivered and the rates and amounts of tobacco products tax payable.

Consumption return.

28. (1) An authorised warehousekeeper shall make a return to a proper officer (in this Regulation referred to as a “consumption return”) in such form as the Commissioners may require of the tobacco products tax payable on each category of tobacco product delivered from the tax warehouse or otherwise released for consumption.

(2) The consumption return in respect of specified tobacco should be in respect of the relevant accounting period, while in the case of all other tobacco products should include all deliveries during the course of a calendar month.

(3) Every consumption return shall be sent by the authorised warehousekeeper concerned so as to be received by the proper office not later than –

(a) in the case of a production warehouse in which specified tobacco products are produced, the eighth working day of the following month, and

(b) in all other cases, the second working day of the following month.

(4) A separate consumption return shall be completed for each tax warehouse and for every warehousekeeper duly using such tax warehouse.

(5) A consumption return shall be made even where there are no deliveries or other releases for consumption during relevant period.

Stock accounts.

29. (1) An authorised warehousekeeper shall keep, in such form as the Commissioners may require, a stock account of all tobacco products produced in, received into, held in and delivered from his or her tax warehouse.

(2) The stock account to be kept under paragraph (1) shall, in respect of each category of tobacco product, show the dates of receipts and deliveries, and in the case of a production warehouse the dates of production.

(3) An entry in the stock account shall be made not later than 12 noon on the next working day following that on which production, receipt or delivery of the tobacco products occurred.

(4) An authorised warehousekeeper shall allow an officer at any reasonable time to take an account of any materials, tobacco products, refuse in his or her stock or

possession and shall render such assistance as may be required of him or her by an officer in taking such accounts.

Stock return.

30. (1) An authorised warehousekeeper shall, in respect of each calendar month, make a stock return in such form as the Commissioners may require, showing for all tobacco products of each category in a tax warehouse –

- (a) the stock balance brought forward from the previous month or other period,
- (b) the quantities received or produced,
- (c) the quantities delivered from the tax warehouse and the quantities otherwise disposed of, and
- (d) the closing balance.

(2) A return under paragraph (1) shall be sent by the authorised warehousekeeper concerned so as to be received by the proper officer not later than –

- (a) in the case of a production warehouse in which tobacco products are produced, the tenth working day of the following month, and
- (b) in all cases, the fifth working day of the following month.

PART 6
PAYMENT AND REPAYMENT OF TAX

Rate of tax chargeable.

31. Tobacco products tax shall be chargeable on tobacco products released from a tax warehouse at the rate in force for such tobacco products of that category at the time they are released for consumption.

Deferment.

32. (1) In order to obtain permission, under section 74 of the Act of 2005, to defer payment of tax, a person shall –

(a) apply in writing to the Commissioners for such permission, and

(b) provide such security as the Commissioners may require.

(2) The Commissioners may withdraw, or vary the terms of, any permission granted.

Repayments.

33. Any claim by a person for the repayment of tobacco products tax to which section 77 of the Act of 2005 or sections 104, 105 of the Act of 2001 refers shall –

(a) be made to a proper officer, in writing or in such form as the Commissioners may specify for the purpose, and

(b) contain the following information in relation to the tobacco product which is the subject of the claim:

(i) the name and address of the owner,

(ii) the classification, description and quantity,

(iii) the amount of tax, which was charged or paid,

(iv) such other particulars as a proper officer may from time to time require in any particular case,

and

(c) be subject to any conditions as the Commissioners may think fit to impose.

PART 7

MISCELLANEOUS

Signature on returns.

34. (1) Any return or declaration required by these Regulations of an authorised warehousekeeper, shall be signed –

(a) in the case of a natural person, by such natural person or by a person authorised in writing to sign such returns on behalf of such natural person,

(b) in the case of a body corporate, by a director or the company secretary or, where a director or the company secretary are duly authorised to do so, by any person authorised in writing by such director or the company secretary, to sign such return on behalf of the body, and

(c) in the case of an unincorporated body of persons, by one of the partners or any person authorised in writing by one of them to sign such returns on behalf of the body.

(2) In the case of any record required to be kept by these Regulations, which is held in a non-legible form, such record shall be produced in a legible form or reproduced in a permanent legible form when so required by a proper officer.

Exemptions.

35. Compliance, in whole or in part, with any of the provisions of these Regulations shall not be required by any class of persons where, as respects that class, the Commissioners so allow and subject to such conditions as they may think fit to impose.

PART 8
REVOCATIONS

Revocations.

36. The Tobacco Products (Tax Stamps) Amendment Regulations 1997 (S.I. No.202 of 1997) and the Tobacco Products (Tax Stamps) (Amendment) Regulations 2006 (S.I. No. 102 of 2006) are revoked.

SCHEDULE 1

(Regulation 4)

Authorised Warehousekeeper and Tax Warehouse- Particulars to be included in an application for approval

1. The name, address and VAT No. of the applicant.
2. The status of the applicant in relation to the business carried out in the premises (for example sole proprietor, partnership, limited company, etc.).
3. The address of the premises for which approval is sought.
4. A plan showing a general outline of the premises, which clearly delineates the area, for which approval is sought.
5. A detailed plan of the premises showing every room and place therein and describing, in each case, its function or purpose.
6. The date from which the approval is sought.
7. Descriptions of all tobacco products to be produced, processed or held.
8. The security arrangements proposed.
9. Where the applicant is a private limited company, the particulars of the directors, shareholders and controllers of the company.

SCHEDULE 2

(Regulation 24)

Specified records

1. Invoices, credit notes, debit notes, receipts and other records of payment.
2. Records relating to all tobacco products received and delivered, including those in relation to imports and exports.
3. Statements of account, profit and loss, trading and management accounts and reports, balance sheets and trading forecasts.
4. Production schedules and reports, and other records relating to such schedules and reports.
5. Product specifications and records of any analysis of tobacco products, or materials.
6. Stock accounts and other stocktaking records.
7. Records relating to any relief from, or repayment of, tax and to any claim for such relief or repayment.
8. Internal and external auditors' reports.
9. Any other record relating to tobacco products, which is kept for a business purpose.

Given this 22 day of May 2006

JOSEPHINE FEEHILY
Revenue Commissioner.

EXPLANATORY NOTE

(This note is not a part of the instrument and does not purport to be a legal interpretation)

These Regulations consolidate and modernise the various tobacco products tax regulations and implement the provisions of Chapter 3 of Part 2 of the Finance Act, 2005, which consolidated and modernised the corresponding primary legislation.