

Duty suspended

Duty suspended – when a business applies for authorisation as a tax warehouse keeper and subsequent approval of the premises

 13.12.2021

Definition of "tax warehouse"

Tax warehouse – a place in which specific excise goods are produced, stored or handled, or into which these goods are entered or from which they are removed – **under a duty suspension arrangement**.

If you apply a duty suspension arrangement in a tax warehouse, you may postpone the payment of excise duty (if you meet the conditions set out in the relevant legislation – fiscal obligation will not change into tax liability until the arrangement is finished).

If a tax warehouse is located in Poland, this place is specified in an **authorisation** issued by the competent head of the revenue office.

Conditions for obtaining an authorisation

If you carry out business activities and intend to obtain an authorisation to operate a tax warehouse, you must register as a taxable person for excise duty purposes.

To this end, you must submit an AKC-R application for registration to the competent head of the revenue office before the first transaction subject to excise duty and pay stamp duty of PLN 170 to the account of the office of the city or municipality having jurisdiction over the seat of the revenue office to which you submit the application for registration.

Next, file **an application** for a tax warehouse authorisation with the competent revenue office. The territorial competence of revenue offices is specified in Article 14 of the Excise Duty Act. In practice this means that you will file the application with the revenue office competent for the area where the tax warehouse is located. If you already operate another tax warehouse, hold a different excise duty authorisation or carry out any other activities subject to excise duty, then file the application with the revenue office competent for:

- the registered address of your business– for legal persons and organisational units without legal personality,
- place of residence – for self-employed persons.

Important: if you carry out business activities in different places, you can choose the revenue office where you will file the application.

To do so, you need to:

- file a declaration on selecting the revenue office with the two revenue offices: the one you selected and the one that was assigned to you, and
- file an AKC-R form with the revenue office you selected.

Then, pay stamp duty of PLN 82 to the account of the office of the city or municipality competent for the area where the revenue office to which you submit the application for an authorisation is located.

You must enclose the following documents with the application:

- a document confirming that you are a taxable person for VAT purposes,
- a document confirming the legal title to use the place in which the tax warehouse is to operate, including the address and cadastral number of the plot where the tax warehouse is to be located;
- a certificate of clean criminal record,
- a social security clearance certificate,
- documents required under separate provisions, related to the operations at the tax warehouse or type of excise goods, in particular required licences or permits, unless the separate provisions state that a licence or permit may be issued only after a tax warehouse authorisation has been issued,
- a declaration that you meet the requirement of the minimum amount of excise duty on excise goods in a given tax warehouse (for tax warehouses operated for warehousing purposes), or the minimum value of all goods covered by the activity of a logistics operator (in the case of tax warehouses operated by logistics operators),
- proof of payment of stamp duty.

This application for a tax warehouse authorisation is also an application for an excise number of the warehouse keeper (if you seek an authorisation to operate your first tax warehouse) and **a request for an official check**.

The application for an authorisation must be accompanied by the documents referred to in Section 3(1) of the Regulation of the Minister for Finance of 31 December 2018 on official checks.

The official check is conducted by the customs and revenue office, in your presence or in the presence of a person you have authorised.

It is conducted to verify whether conditions and measures necessary to conduct customs and fiscal audits have been ensured at the place where business activities are carried out. The following aspects are also verified:

- the location of the tax warehouse;
- the condition and size of the premises;
- the equipment in the tax warehouse;

- safe conditions for storing goods.

Detailed conditions for places where tax warehouses are operated are set out in the Regulation of the Minister for Finance of 21 December 2015 on the detailed conditions for places of receipt of excise goods and places of operation of tax warehouses.

The office draws up an official check report, which, together with the application and accompanying documents, constitutes verification records. If it is found that the conditions and control measures are not guaranteed, and this is not remedied after you have received a request to do so from the relevant head of the customs and revenue office, a decision will be issued refusing the approval of the verification file, which will be a basis for refusing a tax warehouse authorisation.

An authorisation to operate a tax warehouse is issued to an entity which **meets the following cumulative conditions**:

- carries out at least one type of activities involving the production, handling or storage of excise goods, including excise goods owned by other entities;
- is a taxable person for VAT purposes (NOTE that farmers applying for a tax warehouse authorisation whose only activity is manufacturing esters or pure plant oil for own use do not have to be taxable persons for VAT);
- is an entity managed by persons who have not been convicted by a final judgment of document fraud, an offence against property, an offence against trading, an offence against trading in money and securities or a tax offence;
- is not in arrears with duties and taxes constituting state budget revenue, and social insurance and health insurance contributions, and enforcement, liquidation or bankruptcy proceedings are not conducted against it;
- will provide an excise guarantee (unless you are exempt from providing such guarantee - pursuant to Art. 64 (1) of the Excise Duty Act);
- is an entity for which none of the authorisations referred to in Article 84(1), or a licence or authorisation for business activities has been withdrawn on the grounds of a breach of the law, and which has not been prohibited from carrying out regulated activities within the meaning of the Entrepreneurs' Law Act of 6 March 2018, in respect of excise goods;
- has a legal right to use the place in which the tax warehouse is to be operated.

If your activity involves only the storage or transshipment of excise goods, in addition to meeting the above conditions for tax warehouse authorisation, you also have to confirm that your turnover or storage capacity is sufficiently high.

The turnover is determined by the minimum excise duty on excise goods in a given tax warehouse, which in a calendar year should be:

- PLN 222 million for tobacco products;
- PLN 7 million for e-liquids;
- PLN 1.8 million for novel products;
- PLN 23 million for ethyl alcohol;
- PLN 3 million for wine and fermented alcoholic beverages;
- PLN 5 million for intermediate products (fortified wine);
- PLN 8 million for beer;
- PLN 600 000 for lubricating oils.

If you start operating a tax warehouse during a calendar year, calculate the minimum excise duty proportionally to the number of the months left in that year.

The minimum storage volume should be:

- 250 m³ for gas;
- 400 m³ for aviation fuel or jet fuel or kerosene;
- 2500 m³ for other energy products;

If you are a logistics operator who provides to other economic operators comprehensive services of storage, transshipment, transport and preparation for market of their goods, and you intend to operate a tax warehouse for the above activities, in addition to meeting the conditions listed under items 1 to 7, you also have to demonstrate that the minimum market value of the goods in a calendar year will be as follows:

- PLN 350 million for tobacco products;
- PLN 350 million for e-liquids or novel products;
- PLN 50 million for alcoholic beverages;
- PLN 10 million for lubricating oils.

You need to confirm this by submitting a declaration.

Before issuing the authorisation to operate a tax warehouse, the revenue office will request you to provide an excise guarantee (unless you are exempted from providing the security). You must do so within 14 days from the date of receipt of the request. At your request, this deadline may be extended by up to 30 days.

You may provide the excise guarantee in the following forms:

- a cash deposit
- a bank guarantee or an insurance guarantee
- a cheque confirmed by a legal person established in the European Union or a Member State of the European Free Trade Association (EFTA) – a party to the Agreement on the European Economic Area, or by a branch of a foreign bank which carry out banking activities within the meaning of the Banking Law Act of 29 August 1997 in Poland
- a promissory note
- another document recognised as a means of payment
- a mortgage on real estate

Important: a guarantee in the form of a mortgage on real estate cannot constitute more than 45% of the amount of the excise guarantee. The remaining part of the excise guarantee must be provided in other forms.

You must also be registered for the purposes of **the Excise Movement and Control System (EMCS)**, if you plan to ship or receive excise goods (energy products, alcoholic beverages, tobacco products) in the duty suspension arrangement, both within Poland and the EU.

You may receive the authorisation to operate a tax warehouse after the verification records are approved following the official check.

A tax warehouse authorisation is issued for:

- an indefinite period,
- fixed period, not longer than 3 years.

A tax warehouse authorisation specifies in particular:

- the excise number of the tax warehouse;
- the address of the tax warehouse;
- the type of activities carried out in the tax warehouse;
- the type of excise goods dealt with in the tax warehouse;
- the form and duration of the excise security.

The head of the revenue office who issues the authorisation to operate a tax warehouse will also indicate in that authorisation the excise number assigned to you as a warehousekeeper by means of a separate decision.

A separate tax warehouse authorisation and a separate excise duty number are issued for each tax warehouse.

If the place where a tax warehouse operates changes, a new authorisation is necessary.

The head of the revenue office will issue the authorisation or refuse your application by means of an administrative decision.



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