

The Netherlands and Belgium implement new procedure for cross-border bunkering of vessels

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Executive summary

As of 1 April 2019, the so-called "Zeevaartbunkerprocedure 2019" (simplified bunker procedure 2019 or SBP19) has entered into force. The procedure is a joint effort of the Dutch and Belgian customs authorities to enable cross-border bunkering of seagoing vessels in the Netherlands and Belgium. To utilize the procedure the authorization "erkend bunkeraar" (authorized bunker company) is required.

In addition to the rules set forth in the SBP19 agreement, additional rules apply from a customs perspective regarding customs formalities and licenses to be applied for. Moreover, excise legislation provides additional regulations that should be taken into account under SBP19, since bunkering mainly concerns excise goods.

Companies that have bunker activities in both the Netherlands and Belgium can now apply for this license and in the case that the current local clearance procedure export for bunkering is used, taxpayers need to apply before 1 May 2019 to continue using this license until the end of 2019.

Detailed discussion

Background

Under the Community Customs Code, a local clearance export for bunkering was applicable for (cross-border) bunkering activities in the Netherlands and/or Belgium. Because of the entry into force on 1 May 2016 of the Union Customs Code (UCC) embedded in Regulation 952/2013, this license needs to be replaced before 1 May 2019. SBP19 is introduced as the subsequent license, but also in response to the restriction set forth in article 150, par. 5 Delegated Regulation 2015/2446 of the UCC (DA UCC). According to this provision the authorization for entry in the declarant's records (EiDR) on the (re-)export of excise goods is only allowed in national use. As a result, the authorization for EiDR for cross-border bunkering cannot be issued.

Moreover, there were several difficulties regarding controls on the simplified procedure for bunkering of seagoing vessels under the old legislation, specifically, issues regarding the transport document were prevalent.

Authorization

To utilize SBP19, the bunker company has to be recognized as an "erkend bunkeraar" (authorized bunker company). Bunker companies established in the Netherlands will have to apply for the authorization at the Dutch customs authorities, while bunker companies established in Belgium are required to apply at the Belgian customs authorities.

After the application for the authorization has been filed an initial audit will be performed by customs to determine whether the applicant has met the following conditions:

- ▶ Cross-border bunkering will be carried out at least four times a month.
- ▶ The applicant maintains appropriate accounting records.

If the status of authorized bunker company is granted, Dutch and Belgian status holders may bunker seagoing vessels of mineral oils and lubricants loaded in the country that granted the authorization, in both the Netherlands and Belgium (e.g., a bunker company with a Dutch authorization can load mineral oils and lubricants in the Netherlands and perform bunkering activities in the Netherlands and Belgium). For bunkering under SBP19, the definition of mineral oils and lubricants, as set forth in article 2 of the Energy Taxation Directive, is followed.

In practice the authorization will have to be combined with an authorization for a (fictitious) excise and/or customs warehouse, which may also be a barge.

It is important to note that the applicable customs and excise legislation imposes several obligations on the authorized bunker companies. Particularly, important rules that should be considered when bunkering excise goods under SBP19 include:

- ▶ Excise goods may only be loaded in the country that issued the authorization of the bunker company.
- ▶ Bunkering of excise goods is only permitted in bulk with a tank barge, except for additives (may be packed and bunkered by (tank) truck).
- ▶ Goods for which the excise duties have been paid may not be bunkered under the SBP19.
- ▶ Declaration for (re)export should be filed in the country that issued the authorization as well as the discharge of the procedure (irrespective of where the product is loaded or bunkered).
- ▶ The so-called "bunkergeleidedocument" (bunker accompanying document) replaces the e-AD under SBP19.

Discharge for customs and excise

Discharge of SBP19 means the confirmation that the goods under SBP19 exit the European Union (EU). A Dutch authorized bunker company should always obtain discharge for its goods in the Netherlands. The period of discharge for goods under SBP19 is one month after the date of release for export (the same date of issuing the bunker accompanying document).

Discharge should be performed based on the bunker accompanying document. Within 10 days after the end of the period of discharge the bunker accompanying document is to be submitted to the customs authorities, along with the related bunker receipts. The customs authorities will check and confirm the exit of the mineral oils and lubricants via the declaration system (AGS). The excise suspension scheme will also be terminated afterwards.

Transitional arrangements

SBP19 entered into force on 1 April 2019, while the previous bunkering agreement will be withdrawn as of 1 May 2019. A local clearance authorization under the previous agreement can still be used if the application for the SBP19 authorization

is filed before 1 May 2019. The old procedure is then valid until 31 December 2019, except for re-export, or until the SBP19 authorization has been granted.

Starting 1 May 2019, re-export declarations will have to be filed via the declaration system AGS. Furthermore, the local clearance licenses (under old legislation) will not be re-assessed or replaced by EiDR authorizations.

Therefore, it is vital that the authorization for the SBP19 is requested before 1 May 2019, to apply the transitional arrangements.

National bunker procedure

The SBP19 is not obligatory to use. Without this license the standard procedures can be applied. For Dutch bunker companies that only bunker EU goods, including excise goods, from and within the Netherlands no declaration obligations apply. From an excise and VAT perspective a 0% rate or exemption applies. Notably, the bunker receipts

or bunker statements should be submitted as required by the excise legislation. Please note that this is still under discussion within customs.

Re-export of non-EU goods should be done under the authorization "uitbunkering in transit" or standard re-export declaration.

Information

It is key for companies with bunkering activities in both the Netherlands and Belgium, to apply for the authorization SBP19 before May 2019, to be able to utilize the old bunkering procedure until 31 December 2019 and apply for the new simplified bunkering procedure 2019, including other necessary licenses, as soon as possible.

The above is based on our interpretation of current tax legislation and case law published to date. This Indirect Tax Alert provides general information with no pretence of completeness, and it is not a tax advice.

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Indirect Tax

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EYG no. 001903-19Gbl

1508-1600216 NY
ED None

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