

DEMOCRATIC REPUBLIC OF TIMOR-LESTE
GOVERNMENT

DECREE-LAW No. 9/2004
OF 19 MAY 2004

**GENERAL RULES ON THE IMPORT, STORAGE AND MOVEMENT OF
GOODS SUBJECT TO SELECTIVE EXCISE TAX**

Considering the need for a national legal framework to regulate this important economic and tax sector;

Bearing in mind the concern to gradually and smoothly regulate the competitive market, thereby preventing tax evasion on the import, storage, sale and movement of goods subject to selective excise tax (ISC);

Given that this group of commodities comprises goods that are sensitive to the areas of energy and environment, as is the case of fuel;

Without disregarding health-related concerns, which include manufactured tobacco and alcoholic beverages, as well as dangers posed by other inflammable or explosive goods, such as fireworks, ammunition, alcohol and even perfumes;

Taking into account the reality of the current market and the significance of imports, as well as a desirable and fair competition, in which those who commit fraud and tax evasion do not make gains to the detriment of compliant taxpayers;

Respecting, on the other hand, the principles of debureaucratisation, of trust and of responsibility in the harmonious relations between the Administration and taxpayers;

Further considering the need to adequately sensitise the Administration Services and taxpayers, a reasonable and adequate period of time for the proper knowledge of these rules is hereby provided by establishing that this decree-law shall only enter into force 45 days after the date of its official publication;

Thus, pursuant to the authority provided for in paragraph c) of Article 97.1 and in accordance with paragraph e) of Article 115.1 and with paragraph d) of Article 116 of the Constitution, the Government enacts the following:

CHAPTER I
(General Provisions)

Article 1
(Scope)

1. The present decree-law shall be enforced nationwide in the Democratic Republic of Timor-Leste as defined in the Constitution.
2. The goods covered by the present decree-law shall be those subject to the selective excise tax referred to in Article 17 and in Article 2, Part A, of Annex I of UNTAET Regulation No. 2000/18, last consolidated and amended by Article 10 of Law No. 5/2002 of 20 September – Revenue System Amendment Act, which are listed in Article 2 below.
3. Natural or legal persons who manufacture or import the goods referred to in item 2 above may benefit from the customs bonded warehouse regime and may import, manufacture, and store such goods under suspensive regime, thereby paying excises only upon their clearance from a customs bonded warehouse at the moment of their introduction into the consumer market, in accordance with and under the conditions established below.

Article 2
(Specification)

The goods referred to in Article 1 above are as follows:

Tariff Code	Description of Goods
2009	Fruit juices (including grape musts) or juices from alcohol-free, unfermented vegetable products, whether or not containing sugar or other sweeteners
2106	Food preparations (including soft-drink beverages) not elsewhere specified or included
2202	Waters, including mineral water or aerated water, containing added sugar or sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 2009
2203	Beer made from malt
2204	Fresh-grape wines, including alcohol-enriched wines
2205	Vermouths and other fresh-grape wines containing plant or other aromatic flavourings
2206	Other fermented beverages; mixtures of fermented beverages and mixtures of non-fermented beverages with non-alcoholic beverages
2207	Undenatured ethyl alcohol with an alcoholic content by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength
2208	Distilled raw spirits, liquors and other spirituous beverages, whiskeys, rum and tafia, Gin and Geneva, Vodka

2401	Non-manufactured tobacco; tobacco waste M140
2402	Cigars, cigarillos and cigarettes made from tobacco or its substitutes
2403	Other tobacco products and its substitutes, manufactured; “homogenised” or “reconstituted” tobacco; extracts and bundles of tobacco
2710	Petroleum oils or oils from bituminous minerals, not including raw oils, preparations not specified or included in other headings, containing, in weight, 70% or more of petroleum oils or oils from bituminous minerals, which must constitute its basic element
3604	Fireworks, signalling flares or hail flares and other similar items, petards and other pyrotechnical articles
8412	Other engines and traction machines
8703	Motor cars and other vehicles principally designed for the transport of persons (other than those of 8702), including station wagons and racing cars
8707	Bodies (including cabs), for the motor vehicles of 8701 to 8705
8711	Motor-cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars

Article 3 (Definitions)

For purposes of the present decree-law and without prejudice to the provisions of other customs laws and regulations in force, the following terms shall mean:

- (a) **“Authorised warehousekeeper”** shall mean the natural or legal person who, in the exercise of his or her functions, is authorised by the Customs Service of Timor-Leste to manufacture, process, seize, receive and dispatch, in a customs bonded warehouse, goods under suspensive regime that are subject to selective excise tax;
- (b) **“Customs bonded warehouse”** shall mean any and every site approved by the customs authorities, where the goods under suspensive regime referred to in Article 2 above are manufactured, processed, seized, received or dispatched by the authorised warehousekeeper in the exercise of his or her functions, without prejudice to the provisions of the Customs Code;
- (c) **“Suspensive regime”** shall mean the customs and tax regime applicable to the manufacture, processing, seizure and movement of goods under suspension of excise duties as well as other taxes due for the import or manufacture of certain goods, in accordance with the specifications of the present decree-law;
- (d) **“Duties and other taxes”** shall mean the customs duties, the selective excise duty, the sales tax and all the taxes or dues in general that are levied upon the import, manufacture or upon the clearance of goods from a customs bonded warehouse at the moment of their introduction into the consumer market, except for specific provisions on customs bonded warehouses for fuel, tobacco, ethyl alcohol and alcoholic beverages.

Article 4
(Taxes payable)

1. Duties and other taxes nationwide shall be due and payable upon the introduction of goods into the consumer market or upon finding irregularities that must be taxed.
2. The following actions shall be considered introduction of goods subject to selective excise tax into the consumer market:
 - (a) Any and every clearance of goods under suspensive regime from a customs bonded warehouse;
 - (b) Any and every unlawful or clandestine manufacture of goods that fall outside of the suspensive regime and that do not have a customs declaration, that is, without the knowledge or authorisation from the Tax Monitoring Board;
 - (c) Any and every import of goods, even if unlawful, when such goods are not under suspensive regime;
 - (d) Finding irregularities in a customs bonded warehouse, apart from tolerable losses, as established by law and customs regulations.
3. The rate of excise duty and other taxes to be applied nationwide shall be the one in force on the date in which duties and other taxes fall due.

Article 5
(Suspensive Regime and Approval)

1. An application to obtain the status of authorised warehousekeeper and the ensuing approval for a customs bonded warehouse shall be lodged at the Customs Service of Timor-Leste, and shall be accompanied by the following documents:
 - (a) An application wherein the party shall identify him or herself as well as the location of the customs bonded warehouse, the types of goods that he or she intends to keep and store under suspensive regime. If the application is lodged by a company, he or she shall identify the company as well as each of the partners and it shall suffice to submit an updated copy of the articles of association;
 - (b) A photocopy of the taxpayer identification number certificate (TIN) of the company and partners;
 - (c) A photocopy of the certificate of incorporation of the company issued by the Directorate of Trade Services;
 - (d) A photocopy of the personal identification document;
 - (e) The inspection documents of the facilities issued by the Customs Service;
 - (f) The statement of commitment by the interested party stating that he or she shall comply with any controls that the Customs Service may wish to undertake, that he or she shall declare and pay all taxes as set out and that he or she shall be liable for any missing goods in the bonded warehouse;
 - (g) A bimonthly estimate of the customs value to be imported and kept under suspensive regime, in case the activity begins under suspensive regime;
 - (h) A one-year bank guarantee of an amount equivalent to 30% of taxes paid over the previous two months;
 - (i) A certificate of safety against fire, issued by the Fire Brigade situated in the area of the customs bonded warehouse, stating that there shall be no schools or

- hospitals within a 500-metre radius in case of explosives or inflammable goods. In the event of there not being a Fire Brigade within a 200-km radius from the facilities, the Customs Service shall issue the above certificate;
- (j) In case of applications for the creation of a customs bonded warehouse that shall store fuel or undenatured ethyl alcohol, a statement of compliance with the provisions set out on mandatory strategic reserves shall be made;
 - (k) A statement of compliance with any other procedures prescribed by the customs authority.
2. The owner of an already existing customs bonded warehouse licensed by the Customs Service prior to the entry into force of the present decree-law shall not need to undergo all of these formalities; a simple statement declaring that he or she is aware of the present decree-law shall suffice, accompanied, if necessary, by the statement referred to in paragraph j) of item 1 above, all of which are to be submitted to the Customs Service of Timor-Leste within 30 days after that date.

CHAPTER II **(Special Provisions)**

Article 6 **(Customs Bonded Warehouses Storing Undenatured Ethyl Alcohol, Fuel and Other Petroleum Products)**

1. Import duties shall be levied on fuels and other petroleum products at the time these goods are declared to enter a legally established and authorised customs bonded warehouse, following which the Excise Tax and the IV shall be suspended.
2. The storage of undenatured ethyl alcohol and petroleum products in a customs bonded warehouse under a suspensive regime may only take place upon the approval and supervision by a competent customs authority.
3. Such customs bonded warehouse shall be subject to any control measures deemed necessary, namely, access to accounting books, to computer systems, to mandatory data on exit of goods, as well as the physical control of operations shall be subject to any control measures that are deemed to be necessary.
4. Authorised warehousekeepers who are owners of customs bonded warehouses for duly authorised undenatured ethyl alcohol or petroleum products, shall comply with the following complementary obligations:
 - (a) Keep an updated inventory account in a permanent inventory system, indicating the place of origin and destination of goods as well as any information relevant to the calculation of taxes;
 - (b) Display the goods whenever so requested and be willing to undergo searches and other controls as determined by the customs authority;
 - (c) Submit the warehouse goods and measuring instruments to metrological control by the competent entity and have a valid calibration certificate;
 - (d) Keep documents on every receiving and dispatching operation for a period of three years and inform the customs authority of any changes in managers or administrators;

- (e) Submit to the Customs Service of Timor-Leste a daily summary of goods released from the warehouse into the consumer market, which shall be broken down by goods as well as by duty-free and non duty-free destinations;
- (f) Request the presence of a customs officer for every release of goods that, for any reason, is not measured by metre. The presence of an officer is therefore mandatory when releasing goods manually and directly from the tank.

Article 7
(Measurement and Sounding Equipment)

1. The authorised warehousekeeper, who is a holder of a customs bonded warehouse of undenatured ethyl alcohol or of petroleum products, must have the following instruments in the storage sites:
 - (a) Calibration certificates of the tanks, issued by an accredited entity, with the respective volumetric and piping tables;
 - (b) Thermometer with divisions equal to or below 0,5° C and densimeters in compliance with the American Petroleum Institute (API) rules, in case of mineral oils;
 - (c) Sounding tapes certified by a credible entity;
 - (d) Volumetric measurers with certified metre and thermometer.
2. The sounding procedure shall be as follows:
 - (a) Sounding shall be carried out in full tanks with a sounding tape;
 - (b) Samples shall be extracted in equal quantities from the centre of each of the three-thirds of the product stored in the tank;
 - (c) The temperature and density of every portion that makes up the sample shall be calculated and arithmetic averages shall be taken;
 - (d) The values obtained shall be corrected to the reference of the ASTM/API/IP tables of correction.

Article 8
(Delivery of Petroleum Products into a Customs bonded warehouse)

1. When receiving petroleum products not originating from the national territory, unloaded from ships directly into customs bonded warehouses by means of pipes, the pipes for the delivery and clearance of product from the tank must have valves that allow the receiving tank to be isolated from the remaining ones.
2. The Customs technician may close the valves during unloading whenever he or she deems it necessary.
3. After determining the volume of the product in the ship, the exit valves of the tanks receiving the product, that is, the valves of the pipes connecting the tanks where the product is stored to the location where road tankers receive the load, shall be closed.
4. The receiving tank shall be sounded, with a view to determining the existing volume of the product in the tank. The piping valve that connects the tanks to the maritime wharfs shall be opened, thereby initiating the transfer of the product.
5. Once the transfer is concluded, the valve connecting the tank to the maritime wharf shall be closed and the tank shall once again be sounded.

6. The actual volume received shall be calculated on the basis of the difference in volume taken before and after the transfer of the product into the tank.
7. When receiving petroleum products through certified horizontal cylinders equipped with a volumetric table, the tanks shall be sounded with a sounding rod and the volume shall then be calculated and corrected to the reference temperature of 15°C.

Article 9
(Measuring the Volume Received)

1. The volume of the product shall be measured in litres at the observed temperature, by referring to the millimetric tables included in the certificates of calibration of the tanks, thereby obtaining the corresponding volume of the product in litres by interpolating the value obtained during the sounding.
2. The observed density shall be converted to 15°C using the table of correction 53b of the ASTM norm.
3. Table 54b of the ASTM norm, which is used to find the volume correction factor used to calculate the volume at the observed temperature, shall be used to find the volume at the reference temperature of 15°C, taking into account the average observed temperature as well as the density corrected to 15°C.

Article 10
(Clearance of Petroleum Products from a Customs Bonded Warehouse)

1. Portions released from storage facilities of the economic operator, levied on the basis of the volume at the reference temperature of 15°C, shall be measured, by metre, by direct volumetric measurement.
2. In exceptional cases and under the supervision of the Customs Service, the measurement may take place by indirect weighting or by indirect measurement of the tanks.

Article 11
**(Supporting Documents for the Clearance of Goods
from a Customs Bonded Warehouse)**

1. The company shall issue a supporting document for every good cleared – Loading Receipt – which shall be numbered consecutively and include the following information:
 - (a) Name of issuing company, taxpayer identification number (TIN) and facility sites;
 - (b) Date and time;
 - (c) Economic operator to whom the product is sent (client);
 - (d) Trade name of product;
 - (e) Number of the tank feeding the metre;
 - (f) Metre identification;
 - (g) Metre reading once the load is transferred;
 - (h) Difference in metre reading before and after loading;

- (i) Product temperature;
 - (j) Density of product at 15°C;
 - (k) Registration number of road tanker transporting the product;
 - (l) Name of the driver of the road tanker.
2. These documents shall be filed at the company for five (5) years and shall be made available to official entities.

Article 12
(Documentary Procedures: Import Declaration)

1. When receiving mineral oils, operators shall indicate the actual quantity of mineral oils received by volume at the reference temperature of 15°C in the customs declaration form, and shall pay the corresponding amount of customs duties; the commodity shall be suspended from paying other taxes that are due for its introduction into the consumer market.
2. To that effect, in addition to the bill of lading, operators shall submit the import declaration form accompanied by a measurement form with calculations that allow knowing the quantity received as well as the invoice or the corresponding document indicating the CIF value of the taxable unit (litres at 15°C).

Article 13
(Monthly Statement on Quantities Introduced into the Consumer Market)

1. By the 10th of every month, operators shall submit the customs import declaration form and pay for the total quantities (in litres at 15°C) sold to taxable economic operators during the previous month.
2. The authorised warehousekeeper shall declare in the import declaration form the quantities introduced into the consumer market during the previous month, and shall pay the selective excise tax at the rate in force, which shall be levied on the taxable unit, as well as the sales tax, which shall be levied on the value of the product declared in the last entry, accrued of the selective excise tax.

Article 14
(Losses During Storage and Duty Exemption)

1. Where goods stored in warehouses under suspensive regime do not exist in the market, the authorised warehousekeeper, who is responsible for the value of taxes levied on such goods, shall benefit from duty exemption which shall be equal to the difference, or less, between the accounting balance and the goods available in the warehouse, with the following limitations:
 - (a) 8 litres per every thousand litres/15°C for diesel, kerosene and jet fuel;
 - (b) 12 litres per every thousand litres/15°C for petrol and aviation petrol;
 - (c) 20 litres per every thousand/15°C for undenatured ethyl alcohol.
2. The tolerance calculation shall be based on the sum of the quantities of goods in stock at the time of the previous stocktaking, including the quantities entered into the

warehouse thenceforth, which shall be compared to the difference between the stock and the accounting balance.

CHAPTER III
(Inspections, Stocktaking and Guarantees)

Article 15
(Stocktaking)

1. In addition to keeping an accounting record, authorised warehousekeepers shall be responsible for keeping an inventory accounting of the goods in a permanent inventory system, with balance on sight.
2. The Customs Service shall carry out stocktakings on a regular basis, that is, it shall check the goods in stock against the goods entered and released, and shall adopt the following procedures insofar as the losses encountered are concerned:
 - a) Where duty-free goods are not in excess, the Customs Service shall overlook the fact and shall rectify the current account file of the warehouse accordingly;
 - b) Where duty-free goods are in excess, the Customs Service shall encourage the voluntary payment of the tax, undertake the necessary investigations and possibly file a suit for a customs offence;
 - c) Where surpluses are found, the Customs Service shall rectify the current account file of the warehouse;
3. The Customs Service shall carry out any other controls deemed to be necessary.

Article 16
(Guarantees)

1. The storage of goods under suspension of excise duties shall require the establishment of a previous guarantee.
2. The guarantee referred to in item 1 above may be given in the form of cash, of a bank guarantee, as a fidelity insurance or mortgage, or in any other acceptable means, taking into consideration the intended objective.
3. The guarantee must contain a clause under which the guarantor shall expressly undertake him or herself to be subsidiarily liable before the customs authority but shall waive the benefit of discussion, that is, even if the debtor has any goods, the guarantor must pay all amounts falling under the responsibility of the tax defaulter up to the maximum amount guaranteed, within eight (8) days from the date of notification.
4. The guarantee to store oil products in tax warehouses shall be equivalent to 20% of the monthly average taxes due when entering goods into a warehouse during the previous year or, if it regards starting up an activity, to its monthly average forecast for the first year, wherein the taxes due on goods bound for duty-free destinations shall be calculated. The value calculated may not be less than US\$ 5.000.
5. Public bodies that are holders of customs bonded warehouses shall be exempted from establishing guarantees.

Article 17
(Limit of Guarantee)

1. As with every good entered into a customs bonded warehouse, the limit of the guarantee may not be exceeded by a single operation without the Customs Service of Timor-Leste being informed of it.
2. Where a single import or entry into a warehouse is of a value that is higher than the global guarantee given, the authorised warehousekeeper must notify the Customs Service in order for it either to increase or to forgo the limit of the guarantee.

Article 18
(Change of Guarantees)

1. Where there is a failure to comply with the obligations relating to guarantees, the percentages referred to in Article 16 may be increased by a decision of the Customs Controller.
2. Where a taxable person makes a reasoned request, the Customs Controller may grant an extraordinary reduction of the storage guarantee.

CHAPTER IV
(Mandatory Reserves)

Article 19
(Establishment and Maintenance of Security Reserves)

1. Authorised warehousekeepers shall be obliged to establish and maintain security reserves of oil products in national territory for introduction into the consumer market when the government so expressly determines as a means of confronting situations of disturbance insofar as their supply is concerned.
2. The global volume of reserves, the maintenance of which authorised warehousekeepers of customs bonded warehouses for fuel and alcohol shall be obliged to maintain, shall correspond to 1% of the sales turnover, by product, of the previous month.
3. Authorised warehousekeepers who have not submitted their movement of goods in the previous month or who have initiated their activity shall submit an estimate of the entries into the consumer market for the current year and establish reserves on the basis of such estimate.
4. Authorised warehousekeepers may establish reserves in their own warehousing facilities or lease warehouses from third parties, in which case the contract provisions shall allow for a degree of availability similar to what would happen if the reserves were to be established in their own warehouses, and the lessor shall be obliged to allow the competent authorities to carry out the controls deemed to be necessary.
5. The reserves must be available for use and be accessible for identification, accounting and control by the authorities on a permanent basis.

6. Should difficulties in supply arise, authorised warehousekeepers must comply with the decisions made by the government insofar as the security reserves are concerned.
7. Operators and professionals exercising their activities without having the status of authorised warehousekeepers and, therefore, without having a customs bonded warehouse, shall not be obliged to establish such reserves since they do not benefit from the suspensive regime.

CHAPTER IV

(Movement of Goods Subject to Selective Excise Tax and Checks on Exit from the Dili Port)

Article 20

(Accompanying Documents of Goods Subject to Selective Excise Tax)

1. The movement of goods under excise suspensive regime shall be carried out by means of an accompanying document, the model of which shall be approved by a decision of the Minister of Planning and Finance.
2. Bills of lading and invoices shall also be considered as movement documents, thus proving the tax regularisation of such goods.

Article 21

(Documentary Control at the Dili Port: Waybills)

1. Goods may not leave the customs area of the Dili port, by road, if the carrier does not provide a copy of the customs document to the exit controller and keep the original.
2. Duplicate samples of such waybills shall be supplied to this effect.

CHAPTER V

(Tax Marking of Tobacco, Mineral Oils for Fuel and Alcohol)

Article 22

(Health Warnings and Tax Marks on Manufactured Tobacco)

1. Within a maximum period of one year from the date of the entry into force of the present decree-law, measures aimed at implementing compulsory health warnings on cigarette packs and other tobacco products shall be adopted.
2. The possible adoption of a tax stamping recognition system may be adopted after a trial period and shall comply with the terms to be defined by the Government.

Article 23

(Marking and Colouring of Alcohol and Fuels)

The possible adoption of a marking or colouring recognition system may be adopted after a trial period and shall comply with the terms to be defined by the Government.

Article 24
(Storage of Goods at Customs Bonded Warehouses)

Where goods that are subject to selective excise tax are stored together with other goods in the same customs bonded warehouse, the person in charge of such goods shall be obliged to physically separate the goods that are subject to selective excise tax from the other goods by means of separators, including walls, metallic nets and fences, which are to be approved by the Customs Service.

Article 25
(Entry into Force)

The present decree-law shall enter into force 45 days after the date of its publication.

Approved by the Council of Ministers on 31 March 2004.

The Prime Minister
[Signed]

(Mari Bim Amude Alkatiri)

The Minister of Planning and Finance
[Signed]

(Maria Madalena Brites Boavida)

Promulgated on 11 May 2004.

To be published.

The President of the Republic
[Signed]

(Kay Rala Xanana Gusmão)