





doc 11

**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
**Indirect taxes other than VAT**

 Ref. Ares(2015)4828441 - 04/11/2015

Brussels, 24.9.2015

taxud.c.2(2015)4429140 

**CED N° 862**

***Poetry: TAXUD-2015-00921***

**ORIG: EN**

**WORKING PAPER  
FOR OFFICIAL USE ONLY**

## **INDIRECT TAX EXPERT GROUP**

### **Tobacco Taxation:**

**Update on the work of Fiscalis Project Group on Tobacco  
(FPG 050) in 2015**

**Meeting of 27 & 28 October 2015**

## 1. BACKGROUND

In the context of possible revision of Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, the European Commission established a Fiscalis Project Group on Tobacco (FPG 050). This FPG looks into the classification of (new) products in the scope of excisable tobacco products and in particular two recommendations of the study on excise duties on manufactured tobacco<sup>1</sup>. These recommendations were to analyse further the possibilities to include electronic cigarettes and raw tobacco in the scope of excisable goods.

However raw tobacco is the raw material for excisable tobacco products and as such it is not covered by the Directive 2011/64/EU. The study on tobacco taxation identified two problems with raw tobacco.

- It appears that raw tobacco is being sold at retail level, directly to end-consumers, without excise duties;
- It has been reported that raw tobacco was being diverted from legal to illegal trade circuits.

Concerning e-cigarettes, the study signalled that the exclusion of e-cigarettes from the scope of excisable products might have significant long term budgetary implications for Member States. Besides that, the proper function of the internal market might be jeopardized by the introduction of national taxes in an uncoordinated way, resulting in disparate fiscal treatment across the EU in the future.

Working in partnership with DG TAXUD, the Directorate General for Health and Food Safety (DG SANTE) and the Joint Research Centre (DG JRC) are involved in the work of the FPG. In order to take the opinions and experiences of experts from Member States into account, 4 meetings of the FPG have taken place in 2015. Consequently the Commission would like to give an update on the current thinking of the FPG. In this document the general conclusions of the FPG, the remaining questions, feedback from industry and next steps have been set out.

## 2. SUBSTANCE

### 2.1. General conclusions

In the 4 meetings that took place, the FPG mainly focused on e-cigarettes. From those discussions, it is clear that the e-cigarette market is a rapidly evolving market but one where not all the required information is yet available. The following conclusions were drawn during the meetings:

#### *Harmonised approach vs national taxation*

- [REDACTED]  
[REDACTED];

---

<sup>1</sup> 'Study on the measuring and reducing of administrative costs for economic operators and tax authorities and obtaining in parallel a higher level of compliance and security in imposing excise duties on tobacco products', Ramboll 2014, TAXUD/2012/DE/341, see: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/excise\\_duties/tobacco\\_products/studies\\_reports/ramboll-tobacco-study.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/excise_duties/tobacco_products/studies_reports/ramboll-tobacco-study.pdf)

- Some participants felt that essential information to establish a position was missing. They would like to obtain reliable data about the number of users to estimate possible revenues compared to enforcement costs for the government and the administrative burden for economic operators. Some participants also felt that more information is needed on the impact of these products from a health perspective.

[REDACTED]

- Maintaining the proper functioning of the internal market would be the rationale for COM to consider a harmonised initiative for taxation of e-cigarettes.

[REDACTED]

[REDACTED]

[REDACTED]

## 2.2. Remaining questions

Because e-cigarettes are relatively new on the market, the FPG concluded that there is a lack of information. Especially the official information on the size of the market is limited, which makes it difficult to estimate the costs of taxation. The lack of clarity around the health impacts of these products was also noted.

[REDACTED]

controlled?

- 

### 2.3. Feedback stakeholders

COM has been in contact with many stakeholders such as operators producing or selling e-cigarettes on the EU market, tobacco industry owning e-cigarette brands, trade associations and non-governmental organisations. The feedback of stakeholders on the possible taxation of e-cigarettes can be summarised as follows:

#### *A Separate initiative for e-cigarettes*

Extending the scope of the current Directive 2011/64/EU to e-cigarettes would, in their opinion, not allow enough time for thorough research because the market for e-cigarettes and other novel tobacco products is evolving rapidly. Therefore, if taxation of e-cigarettes were to take place in the future, this should preferably be done through a separate 'stand-alone' directive. Most stakeholders recommend to monitor the market and wait until the effects of the Tobacco Products Directive (TPD, Directive 2014/40/EU) are visible.

#### *Small and Medium Enterprises (SMEs)*

Smaller companies and producers expressed their concerns regarding the holding and movement provisions if e-cigarettes were to become excisable goods. In their opinion a simplified procedure or (at least) a longer transitional period would be justified.

### 3. NEXT STEPS

The work on e-cigarettes is ongoing within the FPG and the work on raw tobacco has also recently started. The FPG will therefore continue with the exchange of information on e-cigarettes and elaborate the work on raw tobacco.

The considerations of the FPG will then also be used as input for an Impact Assessment on the possible revision of Directive 2011/64/EU. Because some of the identified difficulties in the study on tobacco taxation might require revision of the directive, the Commission will have to carry out an Impact Assessment according to the Better Regulation principles.<sup>2</sup>

The Commission will maintain contacts with stakeholders and other jurisdictions with experience with e-cigarettes (taxation).

\*       \*

\*

---

<sup>2</sup> COM(2015) 215 final, [http://ec.europa.eu/smart-regulation/guidelines/docs/swd\\_br\\_guidelines\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf)