

Tobacco Europe¹ response to Public Consultation from Swedish Ministry of Finance on New excise duty on other forms of tobacco

Sales of certain tobacco products raise concerns for Swedish authorities as they undermine tax revenues and public health policies. As a solution, Swedish Ministry of Finance wants to excise all forms of tobacco which are not covered by the European Council Directive on the structure and rates of excise duty applied to manufactured tobacco² (TED) and put additional measures for producers of snus and chewing tobacco.

Considerations:

1. In February 2020, the Commission published its report³ on the revision of the TED. The Commission flagged the illicit trade in unmanufactured tobacco as an issue. This was confirmed by the MS in the Council Conclusions⁴ calling for a solution at European level. MS have stated that appropriate control rules should be established with a clear assessment and understanding of the costs and benefits of increased control and monitoring, taking into account the relevant practices introduced by MS in this area and avoid double taxation. The Commission now has to look into this and is expected to come with a proposal. The proposal is expected in 2021⁵. Rather than introducing a measure that will probably need to change after 1-2 years, it would save money and reduce administrative burden by waiting until the Commission comes with a proposal to solve this issue at European level.
2. Swedish consumers wanting to roll their own cigarettes or make their own snus, have 2 options today: buy smoking tobacco which is subject to excise as well as TPD⁶ rules or “other forms of tobacco” which is not subject to excise nor TPD rules (health warnings for example) as it is alleged not to be smoking tobacco. This causes a distortion of competition. Implementing excise at the same level as smoking tobacco will not remove the distortion as TPD rules still apply to smoking tobacco products only. It will also not affect the regulation for snus products in Sweden.
3. If the flows of unmanufactured tobacco products need to be controlled, an option, like in Denmark is to prohibit sales of unmanufactured tobacco to consumers. The measure is easy to implement and does not disproportionately increase the administrative burden. Consumers wanting to roll their own cigarettes or make their own snus can buy smoking tobacco.
4. Any alternative measure that authorities want to put in place should make a clear distinction between sales to consumers, or retail sale and sales/movements between businesses.
5. Sales of tobacco products for their consumption (ie smoking, heating, chewing, sucking, etc), should always be subject to excise. Even if the sale is not directly to the consumers but goes

¹ [Tobacco Europe](#) represents the common views of major European-based cigarette manufacturers such as British American Tobacco (BAT), Imperial Brands (IMB), and Japan Tobacco International (JTI).

² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:176:0024:0036:EN:PDF>

³ https://ec.europa.eu/taxation_customs/sites/taxation/files/10-02-2020-tobacco-taxation-report-summary_en.pdf

⁴ <https://www.consilium.europa.eu/media/44235/st08483-en20.pdf>

⁵ <https://data.consilium.europa.eu/doc/document/ST-8086-2020-INIT/en/pdf>

⁶ TPD: Tobacco Products Directive; 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

through intermediates, who do not have a tax warehouse, the excise is due the moment the goods leave the tax warehouse.

6. By imposing excise on trade between businesses, a discrepancy is created with the Council Directive 2020/262/EU of 19 December 2019 concerning the general arrangements for excise duty, which in Article 6 states that excise on products become due at the moment of release for consumption. Alternative measures should be adopted.
7. The national stockkeeping system that is in place for snus and chewing tobacco should remain in place and could be extended to all forms of tobacco.
8. Beside the stockkeeping, additional measures can be put in place. France for example, is implementing a solution that could be used by Swedish authorities as long as a European solution is not in place.
9. In France, the Customs department is about to introduce a measure where all transports of unmanufactured tobacco into/out of and across France will need to carry a delivery note that allows customs to check whether the goods are part of genuine supply chain. Information that will need to be entered by operators include: description of the goods and value, name of the shipping and name of the receiving company, an auditable number of the delivery note, purpose of the delivery, a contact that customs can reach during the inspection, etc
10. In view of creating a solid definition, the example of the UK can be used⁷: Raw tobacco means the leaves or any other part of a plant of the genus *Nicotiana* but does not include:
 - a. Any part of a living plant
 - b. A tobacco productTobacco products are explained in [Notice 476: Tobacco Products Duty](#). If tobacco is not covered within the definition then it is potentially liable to Excise Duty". The UK legislation also requires that transport above certain weight of tobacco need to be approved.
11. In addition, strict record keeping requirements have been put in place. And quite importantly, penalties are foreseen in case of non-compliance with the regulation.

⁷ <https://www.gov.uk/government/publications/excise-notice-2003-tobacco-duty-the-raw-tobacco-approval-scheme/excise-notice-2003-tobacco-duty-the-raw-tobacco-approval-scheme>