



Public consultation submission

Excise duties applied to manufactured tobacco

16th February 2017

Background to the Irish Vape Vendors Association

The IVVA is the only trade association in Ireland for businesses operating in the vaping industry that is independent of tobacco or pharmaceutical companies.

Our member companies were established by entrepreneurial ex-smokers who successfully switched to vaping from smoking. They are owner-operated SMEs engaged in the retailing and small scale manufacture & distribution of vape products, who uphold the highest ethical and responsible standards in business within the independent vape industry.

The IVVA advocates for policies, standards and regulations that are proportionate and evidence based. We maintain that this can best be achieved by treating vaping products as a distinct product category, rather than by inclusion in inappropriate existing frameworks.

- This proposed excise tax would be applied to vape products via a directive that covers manufactured tobacco products. Vape products are not tobacco products, they contain no tobacco, involve no smoke or combustion, and should not therefore be subjected to a tobacco-style excise system.

The directive in question, Directive 2011/64/EU, is a mechanism intended to apply to:

(a) cigarettes; (b) cigars and cigarillos; (c) smoking tobacco: (i) fine-cut tobacco for the rolling of cigarettes; (ii) other smoking tobacco.

A vape product is where a power source heats up a liquid solution (which may or may not contain nicotine), to produce an aerosol that is then inhaled by the user.

- An excise regime such as this would send some vapers back to smoking, and discourage smokers from switching to vaping and therefore have a negative impact on public health.

Recently, the Irish Health Information and Quality Authority (HIQA) stated in a draft Health Technology Assessment on smoking interventions that if the rate of smokers switching to vaping increased, a cost saving to the Irish state would be realised and there would be a public health gain.¹

Smokers are sensitive to price, and the taxation of tobacco has heretofore been used as a tool to lower the consumption of tobacco. Currently, it is less expensive to vape than it is to smoke. In order for vaping products to continue to act as a viable replacement for smoking thereby reducing the prevalence of tobacco smoking, reinforcing the differences in relative risk between the two products and maintaining the inherent price differences should prevail.

Vape products are already subject to an EU tobacco related directive which promulgates the misconception that both of the products (tobacco cigarettes and vape products) and both of the user actions (smoking tobacco and using a vape product) are of equal safety/risk profile.

Those in lower income groups, where smoking is more prevalent, would be discouraged from switching on cost grounds, and the wider smoking population would be less aware of the differences in the product safety profiles.

We prepared a report in 2016 which looked at the possible impact of an Irish taxation on vape products.² Our findings suggested the following:

“An estimated 70,000 vapers in Ireland no longer smoke. The academic evidence is that each person who quits smoking gains an average of between 0.99 and 2.58 years of life, quality adjusted (ie QALYs).

If 20% of Ireland's vapers return to cigarettes, between 13,860 and 36,120 quality adjusted years of life would be lost.

There is also the risk that existing smokers who would otherwise have switched decide against doing so. If 10% of existing smokers would otherwise have quit, that means 82,700 more smokers and a consequent loss of an extra 81,873 – 213,366 quality adjusted life years.

An e-cigarettes tax would have greatest negative impact on Irish citizens aged 25 to 34 and the most deprived areas of the country, as smoking rates are highest among these groups.”

The IVVA would also like to emphasise that in the accompanying consultation survey, one of the questions posed asked for opinion on whether “The user would increase the consumption of traditional tobacco products”, but makes no mention of future users; current smokers. Current smokers who may in the future stop through switching to vaping represent further public health and fiscal gains through the saving of state aided cessation attempts and through cost burdens on health systems.

- The proposed taxation regime would go against core EU principles of proportionality, non-discrimination, health protection and harmonisation.

The Court of Justice of the European Union has interpreted the principle of **proportionality** to require that any measure of the European administration be based on law; to be appropriate and necessary for meeting the objectives legitimately pursued by the act in question.

Taxes on tobacco products are used as a measure of reducing consumption, on account of the harms caused by smoking. Vaping is not smoking, but is used by consumers as a replacement or alternative for it, to cut down or displace entirely their smoking habit.

The current estimates from Public Health England³ and the Royal College of Physicians, London⁴ state that vaping is at least 95% safer than smoking, and as new evidence emerges, that figure may even rise. A recent study funded by Cancer Research UK and conducted by University College London⁵ suggested the risk profile to be almost the same as nicotine replacement products.

In Ireland, vaping is the number one chosen pathway for smokers out of smoking, with no cost burden to the state and a revenue benefit in the form of Value Added Taxation. Given the current evidence that the risks of vape products so closely align to those of Nicotine Replacement Therapy (NRT) than to those of smoking tobacco, and that evidence suggests that vaping

supports smoking cessation more than NRT, this should be taken into account in deciding any taxes to be applied.

Non-discrimination requires that comparable situations should not be treated differently, and that different situations should not be treated in the same way, unless there are objective grounds for doing so.

The two categories of product; manufactured tobacco and vaping products which contain no tobacco nor involve combustion, should not be treated the same way. There are no objective grounds for the application of an excise duty on a product which is displacing the deadlier of the two, given the vast differences in the safety profile of both categories, and how and why each is used by the consumer.

European Union policies, including those on taxation and the internal market, should be defined and implemented with a view to a high level of **health protection**. Article 168 of the Treaty on the Functioning of the European Union enshrines this principle.

The application of the principle of health protection in the decision on this proposed taxation regime should carefully consider the benefits of behaviour change through differential taxation that fosters conditions for smokers switching to vaping.

In a 2015 paper⁶ discussing how:

“...policymakers could consider differentially taxing these products to maximize incentives for tobacco users to switch from the most harmful products to the least harmful ones”

Chaloupka et al state:

“We believe that implementing differential taxes on nicotine-yielding products on the basis of degree of risk could substantially expedite the move away from cigarette smoking that has occurred during the past half-century, especially now that there are nicotine-yielding products that pose dramatically less danger than combustible tobacco products.”

Already across the EU large numbers of smokers have become smoke and tobacco free, or have considerably reduced their smoking, due to using vape products. An analysis of Eurobarometer data puts these figures at 6.1 million and 9.2 million respectively⁷. The public health benefit and state health cost savings this represents should override the risk of these gains being reversed, should people revert to smoking or be discouraged from switching to vaping.

In the Preliminary Assessment of Expected Impacts, the ‘Likely social impacts of the inclusion of vape products under the directive’ states:

“...taxation of these products may discourage young non-smokers from experimenting with e-cigarettes, and would increase the control of the supply chain, which might have a positive effect on the safety, quality and control of the products in general.”

We believe these two points should be unpacked and considered separately.

The price of vape products is already at a level that discourages regular use by young non-smokers, as currently, across England, Wales and Ireland, there is no evidence to show that young people are using these products regularly in large numbers.^{8 9 10 11} Should there be an increase in the informal market for the products due to an excise being applied, there could be a risk that access to the products by young people use may rise through channels that do not uphold current age restrictions, although to date there is no evidence of experimentation with vape products leading to regular tobacco use.¹²

Moreover, any positive effects on the safety, quality and control of the products in general are already within the remit of proper enforcement of the provisions on vape products under the revised *Tobacco Products Directive* (2014/40/EU) and through product standards and are not the remit of an excise taxation.

In terms of the principle of **harmonisation** there are a number of considerations which should prevail.

Currently, although the Tobacco Products Directive (2014/40/EU) aims to uphold the principle of harmonisation, it none the less grants member states individual allowances to treat vape products differently. States which recognise the public health and fiscal benefits of vape products treat and restrict the products differently than those who take a more precautionary approach.

Should a harmonised excise system be applied to vape products, there is a future likelihood of member states applying differing excise rates in line with their regulatory approaches, which would lead to differing public health outcomes across the union.

- The experience of Italy and the opinion of the Irish Tax Strategy Group informs the view that the proposed excise tax would generate very little income compared to costs associated with applying it.

In a submission to the Irish department of Finance, the Tax Strategy Group¹³ remarked the following:

“...if a substantive duty were to be imposed on e-cigarettes there would be significant cross-elasticity effects, given consumers view e-cigarettes as either substitutes or complements for traditional tobacco products, which could in turn undermine the broader public health objective of reducing tobacco consumption.”

“Using the tracker survey on tobacco use carried out for the National Tobacco Control Office of the HSE, TSG 2015 estimated that a 50c tax per 10ml would yield €8.3 million per annum. However, the implementation and collection of such a tax would be difficult given the wide variety of ways in which these products are supplied to the consumer. Secondly, as previously stated, many sources consider e-cigarettes to be a cessation tool and certainly less harmful than cigarettes.”

In Italy, where a taxation on vape products was introduced in 2014 of €3.73 per 10 millilitres and subsequently increased to €3.85 per 10 millilitres in 2015 (while cancelling the tax on non-nicotine containing products), the market declined from over €400m in 2013 to €97m in 2015.

As in some cases the applied taxation effectively doubled the retail price to vapers, the amount of adults using vaping products fell from 4.2% in 2013 to 1.2% in 2015 and the revenue collected from tax amounted to less 5% of the expected estimates.

Given that the estimated total tax losses to the Irish state due to illicit or counterfeit tobacco in 2015 amounted to €192m, of which Revenue recouped approximately €34.4m in seizures, the above low yield figure of €8.3m in the context of revenue-raising alternatives to the proposed regime should be considered carefully.

- The proposed taxation would have a greater negative impact on the independent vape industry; some SMEs would not be able to meet the required costs and their current customers would likely turn to the informal economy or away from the product category.

The cost impacts of the proposed regime on SMEs in the independent vape industry are considerable, and not in proportion to those on larger players, be they tobacco or pharmaceutical companies.

Should the current customers of SME's either turn to the informal economy, return to smoking or using NRT products, it is unlikely that smaller independent companies would survive, given their already considerable outlay on compliance with existing EU and national regulatory requirements.

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- ¹ <https://www.hiqa.ie/system/files/consultations/Smoking%20Cessation%20HTA%20-%20Public%20Consultation%20Draft.pdf>
 - ² <http://www.ivva.ie/wp-content/uploads/2016/03/IVVA-March-2016-web.pdf>
 - ³ <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>
 - ⁴ <https://www.rcplondon.ac.uk/news/promote-e-cigarettes-widely-substitute-smoking-says-new-rcp-report>
 - ⁵ [Nicotine, Carcinogen, and Toxin Exposure in Long-Term E-Cigarette and Nicotine Replacement Therapy Users: A Cross-sectional Study](#)
 - ⁶ [Differential Taxes for Differential Risks — Toward Reduced Harm from Nicotine-Yielding Products](#)
 - ⁷ [Electronic cigarette use in the European Union: analysis of a representative sample of 27 460 Europeans from 28 countries.](#)
 - ⁸ <http://www.ons.gov.uk/ons/rel/ghs/opinions-and-lifestyle-survey/adult-smoking-habits-in-great-britain--2013/stb-opn-smoking-2013.html>
 - ⁹ http://www.ash.org.uk/files/documents/ASH_891.pdf
 - ¹⁰ <http://www.cardiff.ac.uk/news/view/93573-e-cigarette-use-among-welsh-teenagers>
 - ¹¹ <http://www.cancerresearchuk.org/about-us/cancer-news/news-report/2015-04-16-regular-e-cigarette-use-low-among-teens-analysis-suggests>
 - ¹² <http://www.espad.org/report/trends-1995-2015/country-specific-trends>
 - ¹³ <http://www.finance.gov.ie/sites/default/files/160720%20TSG%2016-02%20General%20Excises%20TSG%202016.pdf>