



Finance Act 2006

2006 CHAPTER 25

PART 1

EXCISE DUTIES

Tobacco products duty

2 Tobacco products duty: evasion

- (1) After section 7 of the Tobacco Products Duty Act 1979 (c. 7) (regulations for management of duty) insert—

“7A Duty not to facilitate smuggling

- (1) A manufacturer of cigarettes or hand-rolling tobacco shall so far as is reasonably practicable avoid—
- (a) supplying cigarettes or hand-rolling tobacco to persons who are likely to smuggle them into the United Kingdom,
 - (b) supplying cigarettes or hand-rolling tobacco where the nature or circumstances of the supply makes it likely that they will be resupplied to persons who are likely to smuggle them into the United Kingdom, or
 - (c) otherwise facilitating the smuggling into the United Kingdom of cigarettes or hand-rolling tobacco.
- (2) In particular, a manufacturer—
- (a) in supplying cigarettes or hand-rolling tobacco to persons carrying on business in or in relation to a country other than the United Kingdom, shall consider whether the size or nature of the supply suggests that the products may be required for smuggling into the United Kingdom,
 - (b) shall maintain a written policy about steps to be taken for the purpose of complying with the duty under subsection (1), and
 - (c) shall provide a copy of the policy to the Commissioners on request.

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- (3) In this section a reference to smuggling products into the United Kingdom is a reference to importing them into the United Kingdom without payment of duty which is—
- (a) chargeable under section 2, and
 - (b) payable by virtue of section 1(1) of the Finance (No. 2) Act 1992 (c. 48) (power to fix excise duty point).
- (4) The Commissioners may notify a manufacturer in writing that they think the risk of smuggling into the United Kingdom is particularly great in relation to—
- (a) products marketed under a specified brand name;
 - (b) products supplied to persons carrying on business in or in relation to a specified country or place.
- (5) The Commissioners may by notice in writing require a manufacturer of cigarettes or hand-rolling tobacco to provide, within a specified period of time, specified information about—
- (a) supply of products marketed under a brand name specified under subsection (4)(a);
 - (b) supply to persons carrying on business in or in relation to a country or place specified under subsection (4)(b);
 - (c) demand for cigarettes or hand-rolling tobacco in a country or place specified under subsection (4)(b).
- (6) The Commissioners may issue guidance about the content of policies under subsection (2)(b).
- (7) The Commissioners may make regulations—
- (a) under which they are required to notify manufacturers of cigarettes or hand-rolling tobacco where products of a kind specified in the regulations are seized under section 139 of the Customs and Excise Management Act 1979 (c. 2) in circumstances specified in the regulations,
 - (b) specifying the procedure for notification,
 - (c) including provision about access to seized products for the purpose of determining who manufactured them, and
 - (d) requiring manufacturers to provide the Commissioners with information or documents, of a kind specified in the regulations or determined by the Commissioners, in relation to notified seizures.

7B Penalty for facilitating smuggling: initial notice

- (1) Where the Commissioners think that a manufacturer has without reasonable excuse failed to comply with the duty under section 7A(1) they may give him written notice that they are considering requiring him to pay a penalty.
- (2) In determining whether to give notice to a manufacturer under subsection (1) the Commissioners shall have regard to—
- (a) the content of the manufacturer's policy under section 7A(2)(b),
 - (b) compliance with that policy,
 - (c) action taken pursuant to any notice under section 7A(4),

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- (d) compliance by the manufacturer with any notice under section 7A(5),
 - (e) the number, size and nature of seizures of which the manufacturer has been given notice by virtue of section 7A(7)(a),
 - (f) compliance by the manufacturer with any requirement by virtue of section 7A(7)(d),
 - (g) evidence about the level of demand for the manufacturer's products for consumption outside the United Kingdom, and
 - (h) any other matter that they think relevant.
- (3) A notice must specify the matters to which the Commissioners have had regard in determining to give it.
- (4) After the end of the period of six months beginning with the date on which a notice is given to a manufacturer, the Commissioners shall give him notice in writing either—
- (a) that they require payment of a penalty, or
 - (b) that they do not require payment of a penalty.
- (5) The Commissioners shall comply with subsection (4) during the period of 45 days beginning with the end of the period specified in that subsection; and for that purpose they shall consider—
- (a) any representations made by the manufacturer during that period in such form and manner as the Commissioners may direct, and
 - (b) action taken by the manufacturer during that period.

7C Penalty for facilitating evasion: penalty notice

- (1) A notice under section 7B(4)(a) (a “penalty notice”) must—
- (a) specify the amount of the penalty which the manufacturer is required to pay, and
 - (b) state the grounds on which the Commissioners think that the manufacturer has failed to comply with the duty under section 7A(1).
- (2) The amount specified under subsection (1)(a) must not exceed £5 million; and in determining the amount to specify the Commissioners shall have regard to—
- (a) the nature or extent of the manufacturer's failure to comply with the duty under section 7A(1),
 - (b) action taken by the manufacturer to secure compliance with that duty,
 - (c) the content of the manufacturer's policy under section 7A(2)(b),
 - (d) compliance with that policy,
 - (e) action taken pursuant to any notice under section 7A(4),
 - (f) compliance by the manufacturer with any notice under section 7A(5),
 - (g) the number, size and nature of seizures of which the manufacturer has been given notice by virtue of section 7A(7)(a),
 - (h) the loss of revenue by way of duty under section 2, or VAT, in respect of the products seized, and
 - (i) any other matter that they think relevant.
- (3) A manufacturer who is given a penalty notice may require the Commissioners to review the decision to issue the notice; and—

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- (a) a requirement must be imposed by notice in writing given to the Commissioners before the end of the period of 45 days beginning with the date of the penalty notice,
 - (b) the Commissioners shall comply with a requirement given in accordance with paragraph (a),
 - (c) the Commissioners shall confirm, vary or withdraw the penalty notice, and
 - (d) the Commissioners shall be taken to have confirmed the penalty notice unless, within the period of 45 days beginning with the date of the requirement to conduct the review, they have varied or withdrawn it by notice in writing to the manufacturer.
- (4) If following a requirement under subsection (3) the Commissioners confirm or vary the notice (or are taken to have confirmed it) the manufacturer may appeal to a VAT and duties tribunal.
- (5) The tribunal may—
- (a) cancel the penalty notice,
 - (b) reduce the penalty, or
 - (c) confirm the penalty notice.

7D Sections 7A to 7C: supplemental

- (1) Payment of a penalty imposed under section 7B(4)(a) shall not be allowed as a deduction in computing income, profits or losses for purposes of income tax or corporation tax.
- (2) A penalty may be enforced as a debt due to the Commissioners.
- (3) In sections 7A to 7C and this section a reference to a manufacturer of cigarettes or hand-rolling tobacco includes a reference to a person who, in the opinion of the Commissioners—
- (a) arranges to have cigarettes or hand-rolling tobacco manufactured, and
 - (b) is wholly or partly responsible for the initial supply of the products after manufacture.
- (4) Where a manufacturer is a parent undertaking or a subsidiary undertaking (within the meaning of section 258 of the Companies Act 1985 (c. 6)) the Commissioners may—
- (a) treat the parent and its subsidiaries as a single undertaking for the purpose of sections 7A to 7C and this section, and
 - (b) in particular, enforce a penalty imposed on the single undertaking as a debt owed by—
 - (i) the single undertaking,
 - (ii) the parent, or
 - (iii) any of the subsidiaries.
- (5) A notice or guidance under section 7A(4) to (6)—
- (a) may be issued to manufacturers generally or to one or more manufacturers or classes of manufacturer,

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- (b) may be expressed to apply to or in respect of manufacturers generally or only to or in respect of one or more specified manufacturers or classes of manufacturer,
 - (c) may make provision generally or only in relation to specified cases or circumstances,
 - (d) may make different provision in relation to different cases or circumstances, and
 - (e) may be varied, replaced or revoked.
- (6) The Treasury may by order—
- (a) amend the list in section 7B(2) or 7C(2) so as to—
 - (i) add an entry,
 - (ii) remove an entry, or
 - (iii) amend an entry;
 - (b) amend sections 7A to 7C and this section so as to alter the class of tobacco products in relation to which they apply.
- (7) An order under subsection (6)—
- (a) may include transitional, consequential or incidental provision,
 - (b) shall be made by statutory instrument,
 - (c) shall be laid before the House of Commons, and
 - (d) shall cease to have effect unless approved by resolution of the House of Commons within the period of 28 days beginning with the date on which it is laid (disregarding any period of dissolution or prorogation or of adjournment for more than four days).”
- (2) At the end of section 9 of the Tobacco Products Duty Act 1979 (c. 7) (regulations) (which becomes subsection (1)) add—
- “(2) Regulations under this Act—
- (a) may enable the Commissioners to dispense with compliance with a provision of the regulations (whether absolutely or conditionally),
 - (b) may make provision generally or only in relation to specified cases or circumstances,
 - (c) may make different provision in relation to different cases or circumstances, and
 - (d) may include transitional, consequential or incidental provision.”
- (3) This section shall come into force in accordance with provision made by the Treasury by order.
- (4) An order under subsection (3)—
- (a) may include transitional, consequential or incidental provision, and
 - (b) shall be made by statutory instrument.

Subordinate Legislation Made

P1 S. 2(3) power fully exercised: 1.10.2006 appointed by {S.I. 2006/2367}, art. 2

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