

The Tobacco Industry and HMRC

Article 5.3: the Framework Convention on Tobacco Control (FCTC)

Purpose

This guidance provides advice on interactions with the tobacco industry to ensure HMRC meets the UK's international legal responsibilities under Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control (FCTC).

All staff that interact with the tobacco Industry should read this guidance and follow it at all times.

Introduction

The FCTC is an international treaty focussed upon the health impacts of tobacco. As the UK Government has ratified and become a Party to the FCTC, HMRC is bound by the FCTC to meet legal obligations.

Article 1 of the FCTC defines the tobacco industry as being tobacco manufacturers, wholesale distributors and importers of tobacco products. This includes organisations or individuals with commercial or vested interest in the tobacco industry, those that receive funding from the tobacco industry, and those that work to further the interests of the tobacco industry, including those organisations with directors from the tobacco industry.

The term also incorporates tobacco growers, associations or other entities representing any of the above, as well as industry lobbyists.

Article 6 of the FCTC states that the development, implementation and enforcement of tobacco tax and price policies should be protected from commercial and other vested interests of the tobacco industry, as required under Article 5.3.

Article 5.3 states that:

"In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."

HMRC responsibilities under Article 5.3

HMRC should limit interactions with the tobacco industry, including any person or organisation that is likely to be working to further the interests of the tobacco industry. In the event interactions are required, these should be conducted with maximum transparency to demonstrate compliance with the FCTC. Such interactions must occur only when and to the extent strictly necessary to enable effective regulation of the tobacco industry and tobacco products, and should:

- Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
- Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry
- Avoid conflicts of interest for government officials and employees.

These responsibilities meet HMRC's responsibilities under the Civil Service Code of integrity, professionalism, honesty and impartiality.

Guidance

When deciding whether to interact with the tobacco industry, HMRC officials must consider a range of factors, including:

- What is the role of the tobacco industry?
- What is the role of HMRC at the event?
- Who is involved in organising?
- Who is providing funding?
- Who is attending?
- What is the scope for informal, unstructured engagement with tobacco industry?
- What are the opportunities and benefits for the achievement of HMRC's strategic objectives, and would there be risks in not interacting?
- How could the interaction be perceived by other external stakeholders and would there be potential media interest? This includes consideration to sensitivities around the timing of the interaction, for example fiscal events.

The scenarios set out below are to help you in the decision making process. Ensure that you are familiar with all the scenarios before making a decision about whether your interaction with the tobacco industry is appropriate. Please note, this list is not exhaustive.

"Green" Scenarios

HMRC can interact with the tobacco industry in the following situations, while remaining vigilant to the associated risks. These interactions conform to HMRC's responsibilities under Article 5.3.

- Interactions with the tobacco industry as taxpayers, including:
 - Relating to the administration of duties and taxes
 - Assuring revenue, including appropriate engagement by Large Business and Customer Compliance Managers
 - On Supply Chain activity and the verification of seized illicit product
- Interactions with the tobacco industry as stakeholders, including:
 - Concerning planned change to regimes or processes to facilitate customer understanding
 - Consultation on tax design - receiving input into proposals. This engagement should take place as part of a formal, structured consultation process that is open to all appropriate stakeholders
- Receiving intelligence on illicit tobacco trade from the tobacco industry to inform HMRC operational activity using established intelligence handling protocols and forums
- Publicity engagements, including discussions with the tobacco industry on marketing activity to ensure any HMRC content is accurate and to maximise impact and reduce duplication on respective messaging in relation to illicit tobacco
- Published Agreements with HMRC, including agreements on the responsibilities of tobacco manufacturers on how they will address Supply Chain requirements regarding the smuggling of both contraband and counterfeit tobacco products into the UK, and

specific responsibilities when either HMRC or the Border Force seizes tobacco product. These agreements must not be drafted by the tobacco industry, be created to provide any benefit to the businesses concerned, or be in the place of legally enforceable control measures.

"Red" Scenarios

HMRC should not interact with the tobacco industry in the following situations. These do not conform to HMRC's responsibilities under Article 5.3 and/or would provide a perception of a real or potential partnership or cooperation other than that which is necessary to collect tax due or for tobacco manufacturers to satisfy their legal obligations.

- Meetings with the tobacco industry, outside formal consultation processes, that seek to influence tax policy
- Participating in conferences and other events organised or sponsored by the tobacco industry, or alongside participants from the tobacco industry that could be perceived as HMRC working in partnership with the tobacco industry
- Working with the tobacco industry in joint application for funding, research or similar
- Providing intelligence to the tobacco industry
- Participating in joint campaigns with the tobacco industry
- Engaging in operations with other agencies funded by the tobacco industry
- Providing or accepting funding to the tobacco industry
- Attending and participating in events, consultative forums, initiatives and receptions in the UK or internationally, organised or funded by the tobacco industry
- Attending press launch events alongside the tobacco industry
- Inputting into research and publicity, requested by organisations with links to the tobacco industry
- Requests to quote HMRC contributions in research and publicity being carried out by the tobacco industry or organisations with links to the tobacco industry
- Requests to endorse the conclusions or findings in research and publicity being carried out by organisations with links to the tobacco industry
- Engaging in publicity in relation to activities carried out by the tobacco industry that could be described as "socially responsible".

This list is not exhaustive.

You must also be vigilant in recognising, during interactions with the tobacco industry, that if topics, actions or conversations begin to fall outside the boundaries of Article 5.3 you take action to cease the interaction.

"Amber" Scenarios

These are where the interaction does not clearly fall into the green or red categories, and where HMRC may or may not be able to interact.

Examples of amber scenarios include:

- Where HMRC are asked to attend meetings, conferences and other events where the tobacco industry are also attending, while remaining vigilant to the associate risks as set out in the "red" scenarios
 - This requires consideration of the opportunities and benefits to HMRC strategic objectives in attending and the risks identified from not attending
 - If attending you should not engage in discussion on illicit tobacco with, or in the presence of, the tobacco industry.

In all situations it is important to consider the possibility that the interaction may become a “red” scenario, and to take appropriate action to end the interaction if that happens.

Exercise caution during interactions with the tobacco industry, in all cases.

Reporting

Article 5.3 guidelines advise any interaction with the tobacco industry on matters related tobacco control should be accountable and transparent.

This excludes meetings held for customer compliance issues and operational meetings on illicit tobacco.