



Tobacco duty anti-forestalling restrictions

Who is likely to be affected?

Manufacturers, importers, excise warehouse keepers, owners of tobacco goods in warehouses and registered consignees who remove, store or receive duty suspended cigarettes and other tobacco products intended for home use.

General description of the measure

This measure will give HM Revenue & Customs (HMRC) flexibility to impose forestalling restrictions against businesses that clear tobacco products in the three month period before a Budget. It will be exercised according to the circumstances faced at the time and the effectiveness of previous restrictions. Furthermore, it will provide certainty and reassurance to the tobacco industry on the scope of possible restrictions. The measure will also allow for appropriate sanctions to deter businesses from breaching the anti-forestalling restrictions.

Policy objective

This measure makes the anti-forestalling restrictions fairer by preventing tobacco manufacturers clearing large quantities of goods immediately before an increase in the rate of duty. The introduction of a new penalty will be effective, proportionate and dissuasive.

Background to the measure

This measure was announced at Budget 2014. All businesses directly affected by the changes were contacted by letter and their views sought on the proposed changes during summer 2014.

Restrictions have been imposed on clearances of cigarettes in the run up to Budget for the last thirteen years. The purpose of the restrictions is to prevent tax avoidance through clearing large quantities of goods immediately before an increase in the rate of duty. Restrictions imposed have succeeded in controlling the amount of forestalling. However, whilst the tobacco manufacturers comply with their quota limits in the last few years they have cleared a significant amount of product in March, ensuring that as much stock as possible is cleared at the lower, pre-Budget rate of duty.

Detailed proposal

Operative date

This measure will have effect in time to apply to the forestalling restrictions ahead of the 2016 Budget.

Current law

Section 128(1) of the Customs and Excise Management Act 1979 (CEMA) allows the Commissioners to issue Directions to restrict, for a specified period, the quantities of excise goods (in this case tobacco) that may be removed for home-use from duty suspended storage, or cleared at import for sale and consumption in the UK to quantities that appear reasonable.

Penalties are currently provided for by Sections 6(1)(b) and 7(2) of the Tobacco Products Duty Act (TPDA) 1979.

Proposed revisions

TPDA 1979 will include a new section 6A to provide a tobacco specific power to allow HMRC to vary the forestalling restrictions from year to year by public notice.

The primary legislation will set clear parameters within which the restrictions will apply and will give HMRC the power to vary the scope of the restrictions to include other tobacco products. HMRC will continue to monitor the anti-forestalling provisions and work closely with tobacco industry to minimise administrative burdens.

Under the general power HMRC will be able to adapt the formula to:

- change aspects of the current formula regarding the calculation of the total quantity of tobacco product involved with a minimum allowance specified as a proportion of annual clearances;
- introduce a cap of a maximum percentage of the total allocation which can be cleared in any one month with minimum percentage restrictions for a month specified in primary legislation; or
- introduce equal monthly restrictions within the overall period of the restriction.

TPDA 1979 will also include a new section 6B which will introduce a new financial penalty for non-compliance with the restrictions.

The new penalty will be based on twice the lost duty if tobacco products are cleared in excess of the allocation (the lost duty being the difference between the pre-Budget rate of duty and post budget rate of duty).

HMRC may reduce the penalty to 150 per cent of the lost duty in prescribed circumstances when a voluntary admission of an excess clearance is made.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.					
Economic impact	This measure is not expected to have any significant economic impacts.					
Impact on individuals, households and families	This measure will have a negligible impact on individuals, households and families. This measure is not expected to impact on family formation, stability or breakdown.					
Equalities impacts	This measure is not expected to have an equalities impact.					
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses. There will be a small adjustment to the calculation of duty due in each month, but there will be no additional administrative burdens as a result of this measure. This measure is expected to have no impact on civil society organisations.					
Operational impact (£m) (HMRC or other)	HMRC will incur a negligible cost for changing anti-forestalling restrictions each year.					

Other impacts	<u>Small and micro business assessment:</u> changes to tobacco anti-forestalling restrictions will affect all sizes of businesses, including small and micro business who remove certain tobacco products for home use. The impact on small and micro business is expected to be negligible. Other impacts have been considered and none have been identified.
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Monitoring and evaluation

HMRC intends to continue to review anti-forestalling arrangements annually, and this will inform the restrictions for the following year.

Further advice

If you have any questions about this change, please contact Louise Shelton 03000 588068 (email: louise.shelton@hmrc.gsi.gov.uk).

1 Excise duty on tobacco: anti-forestalling restrictions

After section 6 of TPDA 1979 (alteration of rates of duty) insert—

“6A Anti-forestalling notices in connection with anticipated alteration of rate of duty

- (1) If the Commissioners consider that an alteration to a rate of duty charged under section 2 on tobacco products may be made (whether under section 6 or otherwise), they may publish a notice under this section (an “anti-forestalling notice”).
- (2) An anti-forestalling notice—
 - (a) must specify a period of up to 3 months (“the controlled period”),
 - (b) may impose such restrictions (“anti-forestalling restrictions”) as to the quantities of the tobacco products that may, during the controlled period, be removed for home use, as the Commissioners consider to be reasonable for the purpose of protecting the public revenue,
 - (c) may make provision for, and in connection with, the controlled period coming to an end early (including provision modifying an anti-forestalling restriction in such circumstances),
 - (d) may make provision for the removal of tobacco products for home use to be disregarded for the purposes of one or more anti-forestalling restrictions in certain circumstances, and
 - (e) may make different provision for different cases.
- (3) The anti-forestalling restrictions that may be imposed include, in particular—
 - (a) restrictions as to the total quantity of the tobacco products, or of the tobacco products of a particular description, that may, during the controlled period, be removed for home use, and
 - (b) restrictions as to the quantity of the tobacco products, or the tobacco products of a particular description, that may be removed for home use during any month, or any period of two weeks, in the controlled period.

This is subject to subsections (4) and (5).

- (4) An anti-forestalling notice may not restrict a person, during the controlled period, to removing for home use a total quantity of the tobacco products, or of the tobacco products of a particular description, that is less than 80% of—

$$\frac{\text{TPY}}{365} \times \text{DCP}$$

where—

TPY is the total quantity of the tobacco products, or (as the case may be) of the tobacco products of a particular description, removed for home use by the person in the period of 12 months ending with the third month before the month in which the controlled period begins, and

DCP is the number of days in the controlled period.

- (5) The anti-forestalling notice may not restrict a person, in any month of the controlled period, to removing for home use less than 30% of the

total quantity of the tobacco products, or of the tobacco products of a particular description, that could, under the anti-forestalling restrictions imposed by the notice, be removed for home use during the whole controlled period.

- (6) If, before the end of the controlled period, it appears to the Commissioners that the rate of duty –
 - (a) will not be altered during the controlled period, but
 - (b) may be altered within a month of the end of the controlled period,the Commissioners may publish an extension notice.
- (7) An extension notice may –
 - (a) extend the controlled period by up to one month, and
 - (b) in accordance with subsections (2) to (5), make such other modifications of the anti-forestalling notice as the Commissioners think appropriate in consequence of the extension.
- (8) The Commissioners may vary or revoke an anti-forestalling notice –
 - (a) as it applies generally, or
 - (b) if the Commissioners consider that exceptional circumstances justify doing so, in relation to a particular person.
- (9) This section does not affect the Commissioners' powers –
 - (a) under section 128 of the Customs and Excise Management Act 1979 (restriction of delivery of goods), or
 - (b) to make regulations under section 7 of this Act in relation to periods specified under that section of that Act.

6B Anti-forestalling notices: sanctions

- (1) This section applies if a person fails to comply with an anti-forestalling notice published under section 6A by, on one or more occasions, removing tobacco products for home use during the controlled period in contravention of an anti-forestalling restriction.
- (2) The failure to comply attracts a penalty under section 9 of the Finance Act 1994 (civil penalties) of an amount determined in accordance with subsection (3) (rather than that section).
- (3) The person is liable to a penalty of –
 - (a) if the person has given an admission notice, 150% of the lost duty, and
 - (b) otherwise, 200% of the lost duty.
- (4) An “admission notice” is a notice –
 - (a) in which the person admits that the person –
 - (i) has failed to comply with the anti-forestalling notice, and
 - (ii) is liable to a penalty determined in accordance with subsection (3), and
 - (b) that is in such form, and that provides such information, as the Commissioners may specify.

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- (5) An admission notice cannot be given if, at any time in the period of 3 years ending with day before the controlled period, the person has given an admission notice in relation to a failure to comply with another anti-forestalling notice.
 - (6) An admission notice cannot be given—
 - (a) at a time when the person has reason to believe that Her Majesty's Revenue and Customs have discovered, or are about to discover, that the person has failed to comply with the anti-forestalling notice, or
 - (b) after the end of the controlled period.
 - (7) The “lost duty” is the amount (if any) by which the duty that would have been charged under section 2 on the excess tobacco products if they had, immediately after the end of the controlled period, been removed for home use exceeds the duty that was charged under that section on those tobacco products.
 - (8) The “excess tobacco products” are the tobacco products mentioned in subsection (1) that the person removed, for home use, in contravention of an anti-forestalling restriction.
 - (9) See section 6A (anti-forestalling notices in connection with anticipated alteration of rate of duty) for the meaning of “anti-forestalling notice”, “anti-forestalling restriction” and “controlled period”.

EXPLANATORY NOTE

EXCISE DUTY ON TOBACCO: ANTI-FORESTALLING RESTRICTIONS

SUMMARY

1. This clause introduces new sections 6A and 6B of the Tobacco Products Duty Act 1979 (TPDA 1979). The new sections aim to prevent tax avoidance through excessive clearance of tobacco products shortly before an expected increase in the rate of duty and provide for effective sanctions. This measure is intended to come into force in time to apply to the forestalling restrictions ahead of the 2016 Budget.

DETAILS OF THE CLAUSE

2. Section 6A allows the Commissioners of HM Revenue & Customs to publish an anti-forestalling notice that will specify a controlled period of up to 3 months and impose such restrictions as the Commissioners consider to be reasonable.
3. Section 6B provides for sanctions for failing to comply with the new anti-forestalling notices.
4. Subsection 6A(3)(a) provides for restrictions as to the total quantity of tobacco products which may be removed during a controlled period and subsection 6A(3)(b) allows HMRC to apply monthly limits to removals during the controlled period.
5. Subsection 6A(4) provides a minimum level for the restricted quantities to be set by HMRC based on the average daily clearance by the business concerned over the year ending two months before the start of the restricted period. The restricted amount may not be less than 80% of the average daily clearances as described above multiplied by the number of days in the restricted period.
6. Subsection 6A(5) prevents HMRC from imposing restrictions to remove quantities of tobacco products of less than 30% of the total allocation in any given month.
7. Subsections 6(a) and 7 provide a power to extend the controlled period where a Budget is later than anticipated. For example, one month later and after the initially specified controlled period.
8. Subsections 6B(1) and (2) provide for a penalty to be charged relating to the amount of goods cleared where there are removals in excess of a restriction on one or more occasion and where a person has failed to comply with the anti-forestalling notice.
9. Subsection 6B(3) provides for the amount of the penalty and there is a reduction of 50% where the person has given an admission notice.

10. Subsection 6B(5) provides that a person cannot benefit from a reduction in the next three years following from a year when that person has benefitted from a reduction.

11. Subsection 6B(6)(b) provides that the admission notice must be sent by the end of the restricted period rather than at the time when the closing statement is submitted.

BACKGROUND NOTE

12. This clause has been introduced to tighten anti-forestalling restrictions and introduce effective sanctions in order to prevent tax avoidance through excessive clearance of tobacco products shortly before an expected increase in the rate of duty.

13. HM Revenue & Customs (HMRC) will publish the Public Notice 150 days before the forestalling controlled period where possible to enable appropriate preparation for business to plan for any supply and demand issues. Where a decision is taken to hold an “emergency budget” HMRC will not be able to provide 150 days’ notice before the controlled period.

14. If you have any questions about this change, or comments on the legislation, please contact Louise Shelton on 03000 588068 (email: louise.shelton@hmrc.gsi.gov.uk).