



## Tobacco duty anti-forestalling restrictions

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### 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

<b>Exchequer impact (£m)</b>	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.					
<b>Economic impact</b>	This measure is not expected to have any significant economic impacts.					
<b>Impact on individuals, households and families</b>	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.					
<b>Equalities impacts</b>	This measure is not expected to have an equalities impact.					
<b>Impact on business including civil society organisations</b>	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.					
<b>Operational impact (£m) (HMRC or other)</b>	HMRC will incur a negligible cost for changing anti-forestalling restrictions each year.					

<b>Other impacts</b>	<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](mailto:louise.shelton@hmrc.gsi.gov.uk)).