



Tobacco Retailers' Alliance response to HMRC's consultation on the Sanctions to tackle tobacco duty evasion and other excise duty evasion

12/05/2017

Who is the TRA?

The TRA represents and campaigns on behalf of legitimate small and independent tobacco retailers who sell tobacco in a legal and responsible way. The TRA believes that tobacco legitimate retailers should be subject to fair and proportionate regulation.

Why is the TRA responding?

The TRA is responding to this consultation as the illicit trade in tobacco products affects our members more than any other retail sector in the country. Illegal tobacco hits legitimate retailers especially hard as tobacco products often make up over 40% of sales revenue in their stores¹. The potential profits of illicit tobacco are so great that there have been instances where shops are just fronts for illicit tobacco sales and have barely any legitimate products (including non-tobacco) for sale².

The current legal threats against those who sell tobacco are clearly not strong enough as shown by the huge amount of illegal tobacco that is sold in the UK. £2.4 billion of tax was lost to the illegal trade last year which means retailers lost revenue of approximately £3.3 billion of which approximately £1.5 billion will be from small retailers of the type that the TRA represents³.

Because of these very large losses, the TRA believes it is vitally important that the Government brings in much stronger punishments for dealing in illicit tobacco to deter criminals. A 2016 TRA survey of our members found that stiffer penalties (83%) were the most favoured method of reducing the illicit trade of tobacco products⁴.

Greater enforcement action was the second most favoured (79%) method of reducing the illicit trade but just 6% of shop owners have confidence in the enforcement work of Trading Standards⁵. Clearly any new sanctions regime must be accompanied by increased vigour from the relevant enforcement agencies in order for it to be effective.

¹ <http://www.tralliance.org.uk/wp-content/uploads/2016/05/TRL-Survey-final-highlights-May-2016-102-2.pdf>

² E.g as discussed on BBC1 East Midlands, 31st January 2016, Inside Out

³ TRA calculations based on Tobacco Duty and VAT making up 75% of the price of a premium brand of cigarettes based on HMRC 2015-16 estimate of the illicit tobacco tax gap.

⁴ <http://www.tralliance.org.uk/wp-content/uploads/2016/05/TRL-Survey-final-highlights-May-2016-102-2.pdf>

⁵ <http://www.tralliance.org.uk/wp-content/uploads/2016/05/TRL-Survey-final-highlights-May-2016-102-2.pdf>

This is especially important at a time when there are so many changes to tobacco packs. Plain packs make it much harder to tell the difference between real and fake cigarettes and minimum pack sizes are expected to increase the size of the illegal market even further⁶.

Other Comments

The TRA thinks the measures in this consultation are good additions to the efforts to tackle illicit tobacco but also thinks that the government must look at this problem more widely. The TRA has previously suggested a number of measures that need to be part of the effort to fight the illicit trade.

These additional measures would mean that there could be more effective implementation of the sanctions discussed in this document. Efforts to combat illicit tobacco should also include⁷:

- More resources for enforcement agencies, such as Trading Standards services (72 per cent of retailers do not believe that Trading Standards are tackling illicit tobacco effectively at present⁸;
- A commitment to re-invest the proceeds of crime taken from convicted offenders in local enforcement services, such as Trading Standards;
- A statutory duty for Trading Standards to respond to retailers' complaints about illegal traders, which should be monitored by HMRC; and
- A single point of contact for reporting those involved in the illicit trade to the appropriate authorities.

Questions

Question 1: Do you think that increasing financial penalties for subsequent tobacco wrongdoings will deter repeat offending? If not, why not and what more do you think we could do?

The TRA doesn't believe the punishments for selling or smuggling tobacco are strong enough. It is likely that individuals who evade tobacco duty don't care about being caught a second or third time because they don't lose out any more than the first time.

It is legitimate retailers who lose revenue because of the illegal tobacco market and tougher punishments are needed to crack down on it.

Doubling the fine for a second effect and tripling for a third is a good idea as the fine will be much more expensive (if you get caught with illegal tobacco) than the profits would have been. This will discourage people from selling or smuggling illegal tobacco.

Question 2: Should such a multiplier apply to wrongdoings in other excise regimes?

No opinion.

⁶ Oxford Economics, 2016, The impact of minimum pack sizes on incidental spend and tax receipts

⁷ First noted in the TRA response to HMRC's consultation on the WHO's Tobacco Illicit Trade Protocol, 2016

⁸ <http://www.tralliance.org.uk/wp-content/uploads/2016/05/TRL-Survey-final-highlights-May-2016-102-2.pdf>

Question 3: What do you think about the proposal to increase the penalty by a proposed multiplier of 100% of PLR for each subsequent repeated tobacco wrongdoing? Is this enough or should it be more?

The government should have a higher than 100% multiplier because it is likely that someone caught with illegal tobacco on several occasions has got away on other occasions. A multiplier higher than 100% would punish criminals for the times that they have got away with it and make them less likely to continue the illegal trade.

Question 4: Do you think that maintaining reductions for cooperation and the quality of information disclosed for repeat tobacco wrongdoings is helpful in providing an incentive for individuals to cooperate with HMRC? Do you think there is a case for allowing no mitigation?

There is no reason to reduce the fine even when a criminal cooperates with the authorities.

They have broken the law, stolen revenue from other legitimate retailers and the government and so should be punished to the maximum that the law allows. This will discourage others from breaking the law as they will know there is no way they can escape a big fine or other punishment if they are caught selling illegal tobacco.

Question 5: What timescale should be considered from the first to second tobacco wrongdoing to trigger the ramping up of penalties? For example, does a 12 month period appear reasonable or a longer timescale to deter the repeat wrongdoers?

The Government definitely shouldn't let people off the higher fine after 12 months.

In fact, there is no reason to have any time limit. If someone has broken the law and is punished they know that what they are doing is illegal. It makes no difference whether they break the law again in 2 weeks or ten years – a crime is a crime and a second offence has no excuse.

Letting people off the higher fine after 12 months will stop people being worried about being involved in the illicit trade again after this period. The government shouldn't risk this happening as it would make the punishment less effective and would not protect legitimate retailers enough.

Question 6: Do you consider it would be appropriate to extend this provision to those selling other illicit products on which excise duties should have been paid?

No opinion

Question 7: Do you think that the new penalty would be an effective and proportionate sanction? If not, can you suggest an alternative approach?

Yes, making it simpler and easier to fine those involved in illegal tobacco is a good thing and will deter people from getting involved in the first place.

Question 8: Do you think that the new penalty should be on a sliding scale as determined by the potential lost revenue?

The new penalty should be higher than the lost revenue as it is likely that people who are caught breaking the law have done so before and so a higher fine would punish them for other offences committed but not caught.

A higher fine would also be a greater threat against any would-be criminals who want to cheat legitimate retailers out of revenues.

Question 9: Do you think that any new penalty should be subject to a maximum amount?

No.

Question 10: Who in the supply chain that is found to be dealing in illicit tobacco do you think that the new penalty should be issued to? How far could it extend?

The penalty should be applied to anyone in the illicit supply chain.

Question 11: Do you believe that 30 days is sufficient time to pay the new penalty or do you think a different time limit is appropriate, if so what and why?

30 days seems a natural time period but a shorter time period should be considered if the system doesn't seem to be changing people's behaviour. For example letting criminals take time to save to pay a fine might make the punishment less painful reducing the deterrent. In this case the time period might need to be shortened.

Question 12: What are your views on the higher penalty amount for failing to pay within 30 days?

This is a good idea and would also help discourage people from being involved in illegal tobacco.

• **Do you think HMRC/Trading Standards should issue a reminder letter to the responsible person before the 30 days are up?**

No, it's not the responsibility of the government to help people who break the law. If someone sells illegal tobacco then they have to be responsible for their actions including remembering to pay the fine.

• **Do you think 14 additional days is the right amount of time to pay the higher penalty? If not why?**

See the arguments referred to in Q11.

• **At what level do you believe the second penalty should increase, by, for example, by 50% of the original amount, 100% or some other amount?**

It should be a large increase so that people feel that it's not worth being involved in the illegal tobacco trade. This could possibly be more than 100% in very serious cases.

• **How do you think HMRC should deal with offenders who fail to pay a second penalty within the 14 days? Possible options HMRC are considering are:**

- **Court Order issued demanding payment known as Order of Recovery**

- **Application to the court for an attachment of earnings order (allows money to be deducted from wages to pay the fine or;**
- **Application to the court to have deductions made from benefits to pay for the fine.**

No opinion

Question 13: What design model do you believe would have the most impact on encouraging behaviour?

Reductions for swift payment should not be considered as it reduces the deterrent.

If the individual cannot pay a fine (including late payment increases) then other punishments should be considered. These should include benefits withdrawal and earnings orders. In extreme cases a prison sentence should be considered.

Question 14: Should payment by instalments be in your opinion considered? If yes, why?

In general, the TRA does not believe this should be offered. This would reduce the impact of the fine and so would make the sanction less effective.

Though this shouldn't necessarily happen in cases of benefit withdrawal or earnings orders.

Question 15: Are there any potential wider consequences of introducing the new penalty that we have not identified?

No opinion

Question 16: Do you think the potential lost revenue threshold figure of £15,000 is sufficient to have a deterrent effect on those who persist in evading excise duty?

It should be lower than £15,000 as there should be no acceptable threshold for dealing in illegal tobacco.

Question 17: What are your views on publicising the details of companies or people who have evaded duty?

This is an excellent idea and would really help legitimate retailers who are the ones who lose out from the illicit market. People would be discouraged from buying tobacco from those who have sold illegal tobacco and would start buying from legitimate retailers.

It is really important that every method of publicising the names of people who break tobacco laws is used so that this is as effective as possible.

Question 18: Do you consider the naming of individuals or companies to be an effective deterrent and likely to change behaviour?

See Q17.

Question 19: HMRC would publish the details on GOV.UK do you have any views on this? Specifically:

- **Who else should HMRC inform- local press, local authority, local police, public health, tobacco manufacturers? Others?**

HMRC should make the information as public as possible especially at the local level and should use every way to spread the name of the criminal. This would give the sanction the maximum impact.

- **Do you think the message would have a greater deterrent if published by another source? If so, who and why?**

No opinion.

- **When publishing the details, should HMRC publish names in the community? If so, how and where?**

Yes, for maximum effect the community that the criminal is from should be made very aware of what has happened. This would probably be very embarrassing and the more this is the case, the more likely that people would be deterred from doing so.

Question 20: Would you be in favour of this approach?

Just asking landlords to put the clause into contracts is not strong enough. If a landlord chose to ignore the request then effectively the sanction would not exist. The Government needs to bring in a law to allow enforcement officials to enforce eviction if people sell illegal tobacco.

Question 21: Do you think the examples above are on the right lines to ensure that the duty of care is reasonable and proportionate?

Yes, these are not particularly onerous to introduce and deliver and are no more than should be expected of any landlord who cares about the problem of illegal tobacco in the community. Landlords should not be allowed to put their profits above the safety of the community and legitimate tobacco retailers by not evicting anyone who is found to have illegal tobacco.

Question 22: What would be a reasonable expectation of the steps landlords/landowners should take and the timescale for doing this and for taking action if there are further transgressions?

No opinion

Question 23: What sanctions should HMRC apply to landlords or landowners who have not taken steps to prevent illicit tobacco or other illicit excise activity on the property or land? For example, should HMRC impose a financial penalty?

Yes, there should be a large punishment for not preventing illicit tobacco on landlord's property. Most landlords take illegal tobacco seriously but there are some who don't and these punish the honesty of others. There have to be reasons for these landlords to comply with the law and fines would be a good place to start. Perhaps these could be the same amount of money in rent that the landlord has taken from person dealing in illicit tobacco.

Question 24: Are there any potential wider consequences of introducing a duty of care and a civil penalty that we have not identified?

Question 25: Do you have any information that could inform the Impact Assessment?

No.