

Beer duty fraud

Background - the problem of fraud

Excise duty fraud in the UK affects tobacco and, to a lesser degree, alcohol – including spirits, beer and wine. The brewing industry is fully committed to working with Government to tackle it. While the bulk of the problem is probably caused by a relatively small number of criminal operations, it is also partly driven by the huge, and growing discrepancy in rates of beer duty between the UK and neighbouring countries.

HMRC's proposals – tax stamps and supply chain legislation

HMRC (under the responsibility of Treasury Minister Chloe Smith) has identified two further regulatory options to reduce beer duty fraud:

- **A beer fiscal mark or 'tax stamps' on every product**, that would identify goods intended for the UK market
- **Supply chain legislation**, that places statutory responsibility on suppliers of beer to take steps to safeguard supplies, such as 'track and trace' of products through the supply chain

An HMRC consultation on tax stamps and supply chain legislation was announced as part of HMRC's Alcohol Fraud Strategy in the Budget, on 26th March, with a view to implementation in 2014.

The consequences - damage to brewers, pubs and consumers

These measures would hugely damage the industry's ability to contribute growth and employment, damage international trade and restrict consumer choice as many brands would disappear from the market.

- **The cost of beer would rise:** The cost of stamping every bottle or can would be around £32 million, placing a huge new cost burden on an already overtaxed British industry, further damaging a sector that has seen excise duty rise by 42 per cent in the past four years. Ongoing costs could be as much as £100 million per year. These costs will inevitably be passed on to consumers
- **Less choice of beer for customers:** The UK has a rich & diverse beer market with over 5,000 (packaged) brands. The majority are smaller and specialist beer brands, many of which would disappear significantly reducing choice for consumers, publicans and pubs.
- **Pubs will be damaged** as beer costs increase and choice is reduced. There will also create more red tape for pubs (and off-trade retailers) and confusion in relation to which of the 5,000+ brands should be marked as there are exemptions being proposed. Pub licenses would be at risk from stocking products containing spotting counterfeit marks which will be simple for fraudsters to replicate and impossible to spot.
- **Brewing, a leading UK manufacturing industry, would be damaged.** Brewing is already facing its most challenging period in living memory with industry profits falling to just a penny a pint. One current area of growth for British beer is exports which could be crippled by the measures proposed.
- **Jobs would be lost:** the brewing and pub sector has the ability to create much need additional employment, if the Government would call a halt to ineffective and hugely costly measures that inevitably cost jobs.

HMRC's plans will not work

As well as damaging the industry, we believe the plans are misguided and will not address the problem:

- **Tax stamps will not reduce fraud:** Criminals and counterfeiters would not be deterred, as fiscal marks would be easy to fake, and there would be a boost to 'bootleg' sales direct to consumers, from the back of white vans and garages.
- **The problem is being overestimated:** HMRC estimates imply a mid-point of £500 million in lost tax revenues, per year. We believe this is exaggerated and not credible. An independent report by KPMG has confirmed that current data is too weak a basis for such a costly policy, and that further work is needed.
- **HMRC's plans are potentially illegal under EU law;** A legal opinion for the BBPA by DLA Piper argues that current proposals would be open to challenge under EU Law. With importers (and indeed exporters) hugely disadvantaged by these disruptive proposals, they are inconsistent with Articles 34 and 35 of the EU Treaty on the free movement of goods, leaving the policy open to legal challenge.
- **Beer cannot be compared to higher value products, like spirits or tobacco:** The tax value of an individual bottle or can of beer averages 53 pence compared to £13 for a litre bottle of spirit and nearly £6 on a packet of cigarettes, so the impact would be much greater on beer.
- **Fiscal marks solely for beer will lead to displacement of fraud to other products:** It is inevitable that fraudsters will look to other products, principally wine, on which to commit duty fraud. This will damage the British beer market without tackling the underlying problem.
- **The current strategy has not been given time to work:** HMRC has reported that their current, intelligence-led approach to disrupting illicit supply chains is leading to greater detection of fraud since its introduction in 2010. This is the right approach and more could and should be done. Other anti-fraud measures, such as EMCS (Excise Movement and Control System) have yet to fully take effect. EMCS has been developed at great expense, but is not being fully used. This EU-wide system records movements of duty-suspended beer on a central database. This system has resulted in significant costs for brewers, so it is disappointing that it has not been fully utilised by HMRC.

The solution – working together to tackle fraud

Brewers are ready and willing to work with HMRC to assess and tackle the problem. Enforcement remains key and HMRC must actively pursue more criminal prosecutions against those involved in fraud. We have also recommended a ten-point-plan to further reduce the level of alcohol fraud. Key elements are:

- **Full utilisation of EMCS capability.** Critically, HMRC should significantly increase stop and seizure at ports and eliminate the multiple use of the same paperwork, currently a fundamental issue
- **The registration/licensing of wholesalers,** currently the only part of the alcohol industry not regulated
- **Enhanced and structured intelligence gathering,** information and knowledge sharing between industry and HMRC
- **Implementing rigorous due-diligence and know-your-customer programmes** throughout the alcohol supply chain

A joint Government and industry anti-fraud task force, with expert stakeholders, should be convened as soon as possible, to drive these forward as part of a comprehensive and coherent anti-illicit programme, and their progress in reducing fraud monitored.

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