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 DIRECTORATE-GENERAL
 TAXATION AND CUSTOMS UNION
 Indirect Taxation and Tax administration
Indirect taxes other than VAT

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MEETING REPORT

1. Subject Directive 2011/64/EU

2. Date and Place 17 July 2018, Brussels

3. Participants DG TAXUD: [REDACTED]

Imperial Brands: [REDACTED]

Altadis: [REDACTED]

4. Summary of the discussion

Imperial Brands requested a meeting to present their view concerning Directive 2011/64/EU (the Tobacco Excise Duty Directive).

Imperial Brands will be participating in the Open Public Consultation (OPC) and make use of the possibility to upload an additional position paper. Imperial Brand mentioned that it is difficult to presents views from an EU perspective in the OPC because the situation depends on the market.

Minimum rates

Imperial Brands and Altadis are of the opinion that the minimum rates for fine cut tobacco and cigarettes should remain as they are. The prices have increased over the years which already make the products less affordable. In particular countries which were granted a transitional period would be affected by an increase, while in these countries (for example Bulgaria) cigarettes are the least affordable in the EU. If the decision is taken that the minimum rates should be increased, it would be desirable if the inflation rate is taken as an indicator. In general, in case of an increase, industry would be in favour of fixed calendar with increases so it is predictable.

Concerning the gap between cigarettes and fine-cut tobacco, Imperial Brand and Altadis highlighted that no changes should take place because of the 'buffer function' of fine cut tobacco. However the fine-cut tobacco is a market on itself with its' own characteristics

and consumers, it also attracts cigarettes consumers who are looking for a cheaper alternative. Imperial Brands and Altadis emphasized that the consumers have moved to illicit trade already in countries where the tax gap between cigarettes and fine-cut tobacco does not exist or has shrunk.

Structure

Imperial Brands and Altadis suggest removing the minimum requirement that the excise duty should represent at least 60% of the Weighted Average retail selling Price (WAP). They believe this requirement became redundant because most Member States benefit from the 'escape clause' and levy an excise duty above 115 Euro per 1000 cigarettes without respecting the 60% requirement. The mixed structure should remain for reasons of principle and because it guarantees the revenue for governments and limits competitive distortions created by purely specific systems which target the 'lower-priced' brands. Instead, Imperial Brands believes that the percentage of specific excise duty as part of the total tax burden, which is currently 76.5% should be lowered whilst a high ad-valorem duty could be preserved.

Next generation products

Imperial Brands disagrees with the terminology 'e-cigarettes' and rather speaks about e-vapour products. These products could contain nicotine but not necessarily. Even in case the products contain nicotine, the nicotine does not have to be derived from tobacco. Imperial Brands uses pharmaceutical grade nicotine for their liquids to guarantee a high quality. None of their products are medically licensed. In principle, the position of Imperial Brands is that these products should not be taxed because people use them to quit smoking or to smoke less. If a harmonised tax would have to be introduced, this should take place in a separate directive. Imperial Brands believes that there is no connection between non-nicotine containing e-cigarettes and tobacco products and sees no reason to include these products in a directive such as Directive 2011/64/EU. This is also a matter of principle. Moreover, national taxes have created illicit trade, induced to self-made liquids and Imperial Brands mentioned that the effect of a harmonised tax could be similar. They suggest considering introducing a 0% minimum harmonised rate to start for nicotine containing products only.

Heat-not-burn products

Imperial Brands believes that a range of novel products (the 'heat-not-burn' category) should be covered by Directive 2011/64/EU because these products contain tobacco which could be smoked. These products should be categorised according to similar products. Currently, in most cases the applied rates by Member States are the rates for other smoking tobacco which is not necessarily correct in particular for those that resemble to cigarettes and can be smoked directly without any manipulation, according to Imperial Brands. These rates are applied according to the weight. Imperial Brands believes the current rates are too low for those that could be assimilated to cigarettes. In particular taking into account that these are premium products, Imperial Brands believes that these products are higher tax burden would be bearable for this product category and should be applied. Guidance for Member States is needed and a possible revision of Directive 2011/64/EU is the opportunity for this.

Minimum Excise Duty

Imperial Brands and Altadis mentioned that the Minimum Excise Duty (MED) needs to be clarified. Some Member States apply a total tax including VAT, while others are not. Moreover, there is no guidance in the directive at which level the MED can be fixed. In some Member States the Most Popular Price Category (MPPC) is still used as a reference which leads to the situation that almost all products on the market are taxed according to the MED and the system is practically purely specific of nature.

Definitions

Finally, Imperial Brands believes clarification of 'smoking' and 'smoking tobacco' (ECJ Eko-Tabak C-638/15) is needed. In particular distinguishing between raw tobacco and smoking tobacco leads to problems in the markets.

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