

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 56: Excise Duty on Tobacco: Anti-Forestalling Restrictions

Summary

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

Details of the Section

2. Section 6A allows the Commissioners to publish an anti-forestalling notice that will specify a controlled period of up to three 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. Subsection 6A(3)(b) allows HM Revenue & Customs (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. This is 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. In particular, there is a reduction of 50% where the person has given an admission notice.
10. Subsection 6B(5) provides that when a person has benefitted from a reduction in a given year, they cannot benefit from a reduction for the following three years.

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 section 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. Whilst tobacco manufacturers have complied 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. This undermines the effectiveness of the restrictions which are designed to prevent excessive clearances of products immediately before the duty increase.
13. HMRC will publish the public notice as defined in FB15 legislation as an anti-forestalling notice 150 days before the start of 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.