



HM Treasury



HM Revenue
& Customs

Vaping Products Duty consultation response template

It is recommended that you read the full consultation document before completing your response. Please note that the text boxes used in this template can be expanded to accommodate additional text.

Guidance for respondents

- Please try to answer all questions (even if it is just to say that you do not have an opinion) as this will assist with our analysis.
- You are not limited to only answering the questions asked and we will also consider written submissions provided to the consultation.
- There is no word limit on responses.

Responses should arrive no later than **29 May 2024**, with early responses encouraged where possible.

For further information on how we handle your personal data, please read the Privacy Notice in Chapter 12 of the consultation document.

Please send your response to: vapingproductsduty@hmrc.gov.uk

Please enter **"Vaping Products Duty consultation response"** in the subject line.

Chapter 4: About you

Full Name (if responding on behalf of a business / organisation please include the business / organisation name):

Chartered Trading Standards Institute

Email address:

lovaping@tsi.org.uk

Address:

1 Sylvan Court, Sylvan Way
Southfields Business Park
Basildon, Essex SS15 6TH

1. Are you:

A business?*

An organisation? If so, please provide details (e.g. trade/health body):

We are a membership organisation representing Trading Standards professionals across local government, central government and in the private sector. This response was put together with support from the Vaping Expert Panel which is supported by CTSI and represents Trading Standards services across the whole UK as well as enforcement partners in other agencies.

An individual

***If you answered 'a) a business' please specify which of the following describe your business:**

a UK producer of vaping products to which you own the brand

a UK producer of vaping products to which you do not own the brand

a UK packager of vaping products that someone else has produced

an overseas producer of vaping products

an importer of vaping products into the UK

a UK retailer

a UK wholesaler or distributor

a business providing goods or services that support the production, packaging, importation, or supply of vaping products in the UK – please provide details:

another type of business – please provide details:

2. If you are a business, where is your business established?

UK

Isle of Man

EU – please state country:

Non-EU – please state country:

3. If you are a business, how many staff do you employ?

- Fewer than 10
- 10-100
- 101-500
- More than 500

Tobacco industry declaration

As a party to the World Health Organization’s Framework Convention on Tobacco Control (FCTC), the UK has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To meet this obligation, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

4. Do you have any direct or indirect links to, or receive funding from, the tobacco industry?

- Yes
- No

Structure of the duty

5. Do you agree that the rates and structure outlined in Chapter 3 will achieve the stated objectives of the duty?

- Yes
- No

Please provide any reasons for your answer.

We recognise that it will be extremely difficult to achieve the stated objectives in the consultation. We question whether it is possible to prevent vapers from finding smoking more attractive while attempting to reduce the attractiveness of higher strength nicotine liquids which are of most value to smokers looking to quit.

There is nothing in the consultation which says that excise is only payable on products which are legal for sale in the UK. Therefore, it appears theoretically possible that manufacturers can pay the excise duty and be allowed to bring their products into the country when they do not comply with other pieces of regulation including the Disposable Vape Ban or the Tobacco and Related Products Regulations (let alone the numerous other regulations which Trading Standards enforce which apply to vape products).

If this happens, although vaping products will be more expensive – for a vape with between 0.1 and 10.9 mg of nicotine per ml, it would be 40p extra for a vape pod containing 2ml of nicotine – this would certainly not deter any young

person from purchasing and would not help enforcement in tackling illegal sales. We could see a scenario where excise taxes had been paid by an importer, products are distributed to retailers, and then removed from sale by Trading Standards due to them not being legally able to be sold under one of many pieces of regulation we enforce.

We would like it to be very clear that excise duties are only payable on products which are legally allowed to be sold in the UK and recognise this requires close working between HMRC and partners to identify those products. We recognise that the remit of HMRC is to collect tax but many of the stated objectives of the Vape Excise Policy are wider governmental objectives, for example, reducing attractiveness to children and therefore the importance of the role of HMRC in tackling illegal vape sales cannot be understated

6. Do you agree that the rates and structure will encourage manufacturers to reduce the nicotine content of their products?

Yes

No

Please provide any reasons for your answer.

The most important consumers of vape products are smokers and ex-smokers and high nicotine content products are particularly valuable to them. There are already different requirements for higher levels of nicotine in vape products. Under the Classification, Labelling and Packaging of Chemicals Regulation (CLP), e-liquid mixtures containing over 1.7% nicotine are classified as Toxic; between 0.49% and 1.7% they are Harmful; and under 0.49% they are not classified at all. Packaging for products which are classified has to contain a warning pictogram with a signal word and the nature of the hazard as shown below:



WARNING



DANGER

Despite the fact that high levels of nicotine require a more substantial warning, manufacturers continue to produce such products as consumers who are moving from smoking often need higher levels of nicotine. Due to the complex nature of assessing levels of nicotine in products we would recommend a flat rate to be imposed on all vaping products including 0% nicotine liquids.

7. What do you think the likely impact the rate structure will have on consumers' vaping behaviours?

Yes

No

Please provide any supporting evidence.

The implication of a higher risk from higher nicotine content (through the requirement for a skull and crossbones pictogram as opposed to an exclamation mark pictogram) does not appear to deter consumers who require a higher level of nicotine. We believe a careful balance needs to be met in terms of setting the Duty at a level that would not encourage people on lower incomes to return to smoking cigarettes (which are more harmful) because they may not be satisfied with the lower level of nicotine in the cheaper vaping products

Scope of the duty

8. Should production of vaping products by individuals for their own use be within scope of the duty?

Yes

No

Please explain any reasons for your answer.

There are already consumers who mix 0% nicotine liquids with high strength imported nicotine and this will become more common. However we recognise that it will be extremely difficult to enforce

9. Are there any other factors concerning home production/blending that should be considered?

Yes

No

Please specify.

No opinion

Chapter 5: Liability for the duty

10. Do you agree with the proposals on how liability would work?

Yes

No

Please provide any reasons for your answer.

No opinion

11. Do you agree with HMRC's proposal for when products should be charged with the duty?

Yes

No

Please provide any reasons for your answer.

12. Do you have views on the extent to which premises used for further processing or packaging should be required to register or seek approval?

Yes

No

If so, please explain your answer.

All premises involved should be required to register or this could be a loophole

13. Do you agree with the suggestion on who should be liable to pay the duty?

Yes

No

If not, do you think any other person should be held liable?

14. The government also welcomes evidence on the processes followed in the manufacture of vaping products, including any secondary processes that are carried out after initial manufacture, for example processing of semi-finished products or packaging.

No evidence to share

Exemptions and reliefs

15. Do you agree that products destined for general sale on the UK market should not qualify for any reliefs or exemptions from the duty?

Yes

No

If not, do you think there should be any exceptions to this, please explain why.

16. Are you aware of any examples of vaping products being used for purposes other than general sale on to the UK market that you feel ought to be eligible for relief or exemption?

Yes

No

If so, please provide any supporting evidence.

Again we would highlight the issue of vaping products which are illegal for sale in the UK under other regulations being imported for other reasons than general sale e.g. "it's coming in for re-labelling before being shipped to another country" "it's coming in for exhibition purposes". A member of the Chartered Trading Standards Institute Vaping Expert Panel attended the Vape Expo Exhibition at the NEC in October – of the 40 exhibition stands visited, only 4 were promoting products which are compliant with UK regulations.

Chapter 6: UK manufacture: Registration, returns and other requirements

17. Please provide information on how manufacturing supply-chains of vaping products currently operate.

Manufacturing supply chains of vaping products in the UK appear to be far more compliant with the requirements of other regulations including the TRPR than products manufactured and shipped in from China and other countries. The latter are extremely opaque and difficult to unpick for enforcement purposes.

18. Are vaping products subject to additional processing on a different premises or by businesses other than the initial manufacturer?

Yes

No

If so, please explain your answer and provide any supporting evidence.

No evidence

19. Are there any processes, including packaging of vaping products, that you feel should not be required to take place on premises registered or approved by HMRC?

Yes

No

If so, please explain what these are and why the relevant premises should not require approval from HMRC.

Registration of premises, process and requirements

20. Is there any other information that would be relevant for HMRC to consider an application for registration?

Yes

No

If yes, please explain your answer and provide any supporting evidence.

21. Is there a need for joint registrations covering more than one legal entity that manufactures/or stores vaping products in the same premises?

Yes

No

If so, please explain your answer and provide any supporting information and evidence.

No knowledge

22. Is there a need for registrations to cover more than one premises owned by a single entity?

Yes

No

If so, please explain your answer and provide any supporting evidence.

No knowledge

Refusal/Revocation/Deregistration

23. Do you agree these registration and deregistration provisions are appropriate?

Yes

No

If not, please explain your answer and provide any supporting evidence.

No knowledge

24. Please provide details of the one-off costs businesses may face for registering for the duty with HMRC.

No knowledge

Filing returns and other requirements

25. Please provide details of the expected one-off and ongoing costs to businesses of completing and filing a monthly online return and making payments of duty.

No knowledge

26. Are these return and payment arrangements appropriate for UK manufacturers of vaping products?

Yes

No

If not, please explain your answer and provide any supporting evidence.

No knowledge

27. How soon (number of days) after the end of a month should businesses be expected to submit their return and make payment to HMRC for the duty? Please explain your answer.

No knowledge

Credits and repayments

28. Are there any other circumstances where a claim to a repayment of duty should be permitted which has not been covered above?

Yes

No

If so, please explain your answer and provide any supporting evidence.

No knowledge

Tax agents and intermediaries

29. If you are a business, do you intend to use a third-party agent to help meet your obligations for the duty?

Yes

No

If so, please provide details on which obligations you would seek assistance with.

No knowledge

30. If you are a tax agent, what services relating to the duty do you expect to offer to your customers?

No knowledge

Records and accounts

31. Will the record keeping requirements outlined above be straightforward for businesses to comply with?

Yes

No

If not, please provide details of any issues you expect.

No knowledge

Chapter 7: Treatment of imports, exports, and duty suspension

32. Is the proposed approach to imports appropriate for vaping products?

Yes

No

If not, please explain your answer and provide any supporting evidence.

33. Please provide information on how importation supply-chains of vaping products currently operate.

34. Is there is a need for any additional arrangements covering other persons that may have a role in import processes? For example, agents or fulfilment houses.

Yes

No

If so, please explain your answer and provide any supporting evidence.

This needs to take account of the substantial amount of illegal products imported into the UK

Duty suspension arrangements

35. Are the proposals related to duty suspension appropriate?

Yes

No

If not, please explain your answer and provide any supporting evidence.

No knowledge

36. Is there a commercial need for HMRC to permit duty suspended storage of imported products?

Yes

No

If so, please explain your answer and provide any supporting evidence.

No knowledge

37. Do you agree that EMCS should be used for duty-suspended movements of vaping products in the UK?

Yes

No

If not, please explain any circumstances that you think are relevant.

No knowledge

38. If you are an importer of vaping products, how are they currently moved from overseas to the UK? Please provide details on packaging (individual pods, as bulk liquid or any other means) as well as any evidence you see as relevant.

N/A

Duty-free allowances

39. Should there be a quantitative personal allowance for vaping products?

Yes

No

Please provide evidence to support your answer where possible.

An indicative personal allowance would allow enforcement officials at the border to be clear when products are being imported. As the Tobacco and Related Product Regulations 2016 state that products which do not comply are illegal if they are "sold for the purpose of consumption in the UK" there is a grey area where importers claim they are not for sale, only for personal use. A clear indication from HMRC would have benefits for other enforcement bodies dealing with illegal vapes.

Goods to be loaded as ship, train, or aircraft stores

40. Should the government apply similar arrangements to vaping products shipped as stores as are applied currently for existing excise duties?

Yes

No

If not, please explain your answer and provide any supporting evidence.

No knowledge

Chapter 8: Compliance and enforcement

41. Are there any other specific compliance risks relating to the manufacture and importation of vaping products that may require bespoke compliance arrangements?

Yes

No

If so, please outline any scenarios that you anticipate may require bespoke compliance powers.

Consideration of the potential risks from storage and disposal of vaping products containing batteries in particular

42. Where is the nicotine used in the manufacture of vaping products generally sourced from (e.g. UK or imported)?

No knowledge

43. How do businesses know the nicotine content of vaping products they manufacture or import?

For businesses to reply

44. How easy is it to test the nicotine content and strength of vaping products? Please provide relevant information relating to costs and availability of tests.

It is not easy to rely on tests conducted by manufacturers. Some suppliers adjust for density which is allowed providing they have reliable data to justify doing so. CTSI withdrew guidance on application of CLP because of this difficulty and are still considering how best to approach. We strongly recommend a flat rate to reduce the difficulties of assessing nicotine strength.

45. Are there any industrial uses for nicotine, other than the manufacture of tobacco, vaping and smoking cessation products?

Yes

No

Please provide evidence where relevant.

No knowledge

Penalties

46. Do you consider that the suggested approach to compliance and penalties is appropriate?

Yes

No

If not, please explain your answer and provide any supporting evidence.

Consideration of allowing Trading Standards to refer for penalties would be valuable

Track and Trace

47. Should a track and trace system be introduced for vaping products?

Yes

No

Please explain any reasons for your answer.

Absolutely yes but we recognise that it will take time to embed the vape excise policy and would not want to impede progress by introduction of Track and Trace. We would highlight there are many manufacturers involved in the vaping industry compared to the tobacco industry and some would require significant support for the introduction of Track and Trace.

48. Are there any other compliance tools, e.g. fiscal marks, which would be appropriate to introduce for vaping products?

Yes

No

If so, please outline these tools and explain how they would help ensure compliance with the requirements of the duty.

Although this will be a matter for DHSC and HMRC to agree, we would highlight the fact that a substantial amount of information is already required on the packaging (see Regulation 37 of the Tobacco and Related Product Regulations 2016 plus the MHRA interpretation of Regulation 37 [Advice for Retailers and Producers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/advice-for-retailers-and-producers) – as well as CLP requirements as highlighted in the answer to Q6. We believe it is important that information on labelling is legible by consumers and this is more important than a fiscal mark

Chapter 9: Understanding commercial practices

49. Unless already covered in your responses to other questions within this document, please tell us about how your business operates and how you think it would be impacted by the duty, including additional administrative burdens?

Not relevant

50. Are there any specific impacts on small and micro businesses that are not covered?

Yes

No

If so, please provide details of the anticipated one-off and on-going costs and burdens.

Not relevant

51. Are there any specific impacts on importers that are not covered?

Yes

No

If so, please provide details of the anticipated one-off and on-going costs and burdens.

Not relevant

52. If you manufacture or process vaping products, what type of businesses do you supply them to?

Not relevant

53. If you manufacture or process vaping products, how much of this product is sold domestically and how much is exported?

Not relevant

54. If you manufacture or process vaping products, please explain how the proposed levels of duty compare to the other costs involved in production/distribution. Do you expect an impact on profit margins?

Not relevant

55. If you are a business that supplies vaping products, to what extent do you expect to 'pass through' the new duty in prices that you charge to your customers?

Not relevant

56. If you manufacture or store vaping products, how long do you typically keep stock on hand before it goes out to sale?

Not relevant

57. Is there anything else you would like to add about how your business operates that may be relevant to the design of the new duty?

Not relevant

Alternative Nicotine Products

58. Do you believe the introduction of the new duty would lead to consumers switching to alternative nicotine containing products?

Yes

No

Please add which products you believe would be a realistic switch.

We are already seeing youth uptake of nicotine pods which have no current regulatory framework and is therefore of concern.

Chapter 10: Assessment of Impacts

59. Unless already covered in your responses to other questions within this document, is there anything else you would like us to note about the impact of the duty?

We have continually advocated for a duty on vaping products to add the HMRC muscle to our attempts to tackle the illegal market. We very much hope HMRC will consider our responses and not throw the baby out with the bath water in terms of moving people from their dangerous tobacco habit to legal compliant vaping liquids

Thank you for taking the time to respond to this consultation. HM Treasury and HM Revenue and Customs (HMRC) value the input of stakeholders and interested parties. We will consider your response to help shape our policy development and ensure a vaping duty achieves its objectives.

Please send your response to: vapingproductsduty@hmrc.gov.uk

Please enter "**Vaping Products Duty consultation response**" in the subject line.