

16 Deferral of Tobacco Stamp Liability

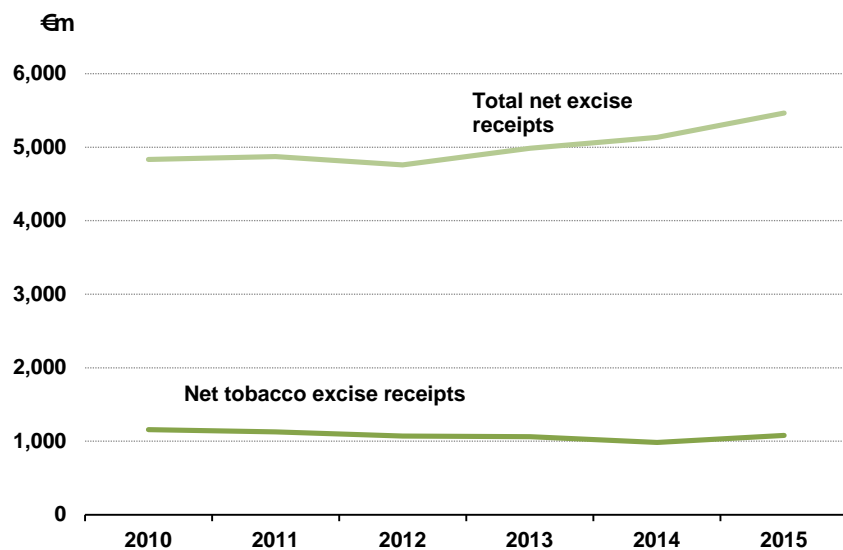
16.1 In October 2015, the Revenue Commissioners allowed a company to defer part of a payment for tobacco stamp liability from December 2015 to January 2016. As a result, a significant amount – equivalent to 11% of the company's tobacco stamp liability for 2015 – that would normally have been due for payment on 21 December 2015 was not paid until 28 January 2016.¹

16.2 This report examines

- the tobacco products tax process
- the exceptional circumstances that gave rise to the decision by Revenue to defer the payment
- the process used to approve the deferral of the payment.

16.3 The total net excise receipts in 2015 were €5.46 billion of which €1.08 billion, or just under 20%, related to tobacco excise (see Figure 16.1).

Figure 16.1 Net excise receipts, 2010 to 2015



Source: Office of the Revenue Commissioners

¹ The actual amount of the deferral is not disclosed as it may lead to identification of the company.

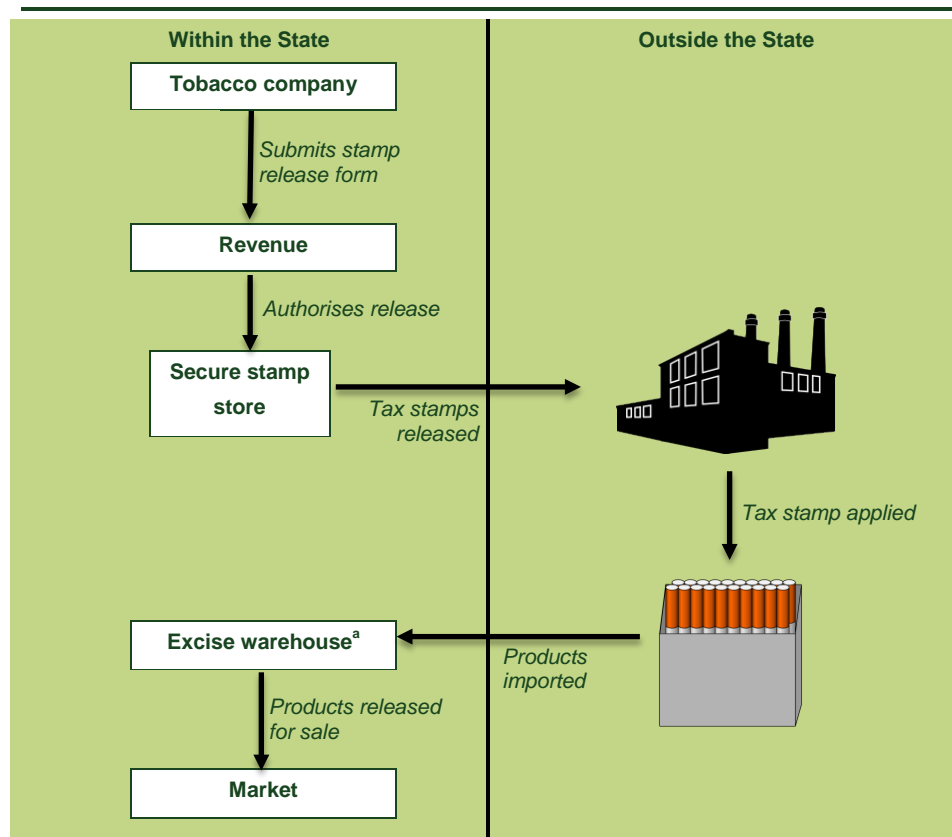
² 'Specified tobacco products' includes cigarettes and fine-cut tobacco for the rolling of cigarettes. A tax stamp is not required on 'other tobacco products' such as cigars, pipe tobacco or other smoking tobacco, but tax is still payable on such products.

Tobacco tax stamps

16.4 Tobacco companies are required to place a tax stamp issued by Revenue on specified tobacco products for sale in Ireland.² The stamp is applied directly to packs beneath the cellophane wrapper. The tax stamp represents the amount of tax due on each pack of tobacco, and its presence signifies that tax has been paid on the product. Figure 16.2 summarises the tobacco tax stamp system.

16.5 The number of companies involved in payment of tobacco products tax is very small and all cigarettes and the majority of 'roll your own' tobacco for the Irish market are produced outside the State.

Figure 16.2 Tobacco tax stamp system



Source: Office of the Comptroller and Auditor General

Note: a Manufactured tobacco products are accompanied by an electronic administrative document when they are brought into the State. This is reconciled to a landed warrant submitted by the tobacco company at the end of each month.

- 16.6** Revenue staff advise the tobacco company in advance of the intended time of delivery of tax stamps and also attend to oversee the receipt of the stamps. On delivery of stamps, the authorised tobacco company official and the Revenue staff present compare the number and details of stamps received with the details contained in the delivery docket.

Changes in legislation on tobacco products

- 16.7** New laws, regulations and administrative provisions were introduced by the European Union in 2014 relating to the manufacture, presentation and sale of tobacco and related products.¹ The directive provided for changes to the format of tobacco packs including an increase in the size and position of the health warning on the pack, where 65% of both the front and back of each pack must display two combined health warnings.
- 16.8** After 20 May 2016, tobacco companies can manufacture and supply only tobacco packs conforming to the new directive. Stock products manufactured prior to 20 May 2016 under the old regulations can be sold until 20 May 2017.

¹ EU Directive 2014/40/EU.

- 16.9** The Department of Health on 18 March 2016 announced a transitional exemption to allow the location of the tax stamp on tobacco products to remain unchanged for a period of three years. Up until that point, tobacco companies were unsure whether regulations specifying a new pack format would be introduced and what those regulations might include in relation to the placement of stamps.

Tax payment arrangements

- 16.10** The payment of tobacco products tax in respect of specified tobacco products is by means of the purchase of tax stamps issued by Revenue.¹ A liability for the tobacco stamp charge is generated when the tax stamps are taken from the secure stamp store by the tobacco company.
- 16.11** A two-month standard deferral period is allowed for payment of the tax stamp liability under the legislation e.g. tax stamps purchased in May must be paid for by the tobacco company by July. An exception to the two month deferral is at year-end where all tax stamp liabilities for the period October, November and half of December are settled on 21 December.
- 16.12** In order for tobacco companies to avail of deferred payment, tobacco products tax and the tobacco stamp liability must be secured by means of a bank guarantee or bond which can be called on by Revenue in the event of a default. The guarantee specifies the amount for which the guarantor could be liable in any calendar month, with a provision that the overall potential liability of the guarantor is up to 3.2 times this amount.
- 16.13** In situations where the monthly tax stamp liability due for payment exceeds the guarantee amount, Revenue contacts the tobacco company and requests immediate payment of the excess amounts over the guarantee. The remaining balance is paid on the normal date for that monthly liability.

Deferral of payment

- 16.14** In exceptional circumstances, Revenue can permit the producers of specified (i.e. stampable) tobacco products to avail of the provisions governing payment of tax on other tobacco products.² This potentially allows a payment for tobacco stamps obtained in October – mid December to be deferred for up to one month after the liability arises.³ The exceptional circumstances provision was initially provided for in legislation in 1994 which came into full effect on 1 October 1996.⁴ Revenue exercised this power for the first time in 2015, as set out below.

Exceptional circumstances

- 16.15** Revenue has not defined what constitutes exceptional circumstances under this legislation. Revenue noted that an attempt to define specific circumstances or events as exceptional for the purposes of the legislation could lead to cases where taxpayers create such exceptional events to seek the associated benefits.
- 16.16** Tobacco companies made a case to Revenue in October 2015 that, due to the uncertainty around the format of the new pack, they would not be in a position to produce stock compliant with the new directive at short notice. Because tobacco products for the Irish market are produced outside the State, that production makes up a very small element of the overall production run of the tobacco companies and so production slots for Ireland must be booked well in advance.

¹ Section 73 (2), Finance Act 2005.

² Section 73 (2) of the Finance Act 2005 states that "Payment of tobacco products tax in respect of specified tobacco products shall be by means of the purchase of tax stamps issued by the Commissioners except where the Commissioners, in exceptional circumstances, permit payment to be subject to the provisions governing other tobacco products".

³ Section 74(c) Finance Act 2005 sets out the terms relating to the deferral of payments in respect of other tobacco products.

⁴ Section 69, Finance Act 1994.

16.17 The tobacco companies indicated that if they did not stock pile tobacco products there could be limited or no stock available for the Irish market after 20 May 2016. Revenue identified a risk that an absence or shortage of legal tobacco product might lead to an increase in illegal tobacco sales and a consequent loss of tobacco products tax revenue.

Approval of the payment deferral

16.18 One tobacco company commenced stockpiling specified tobacco products in 2015 for the 2016 Irish market. As a result, the total amount that the company was liable to pay for tax stamps for the period October, November and the first half of December was nearly double that for the same period in 2014.

16.19 In October 2015, Revenue agreed to defer part of a payment due from December 2015 to January 2016. The deferred amount was significant, being equivalent to 11% of the company's tobacco stamp liability for 2015. The deferral was due to the exceptional nature of the uncertainty around the new pack format. The company confirmed that the associated tobacco products would not be released for sale until after the payment was received by Revenue in 2016. As a result, the amount transferred to the Exchequer in December 2015 did not include the deferred amount.

16.20 The approval for the deferral of the payment was by means of an oral discussion between the Large Cases Alcohol, Tobacco and Multiples District Manager and the Assistant Secretary responsible for Large Cases Division. Revenue does not appear to have formally documented the approval process.

16.21 Revenue noted that the oral approval was the conclusion to a number of discussions and meetings held in which the District Manager had briefed the Assistant Secretary on the case.

16.22 A similar deferral arrangement was extended to another company in 2016.

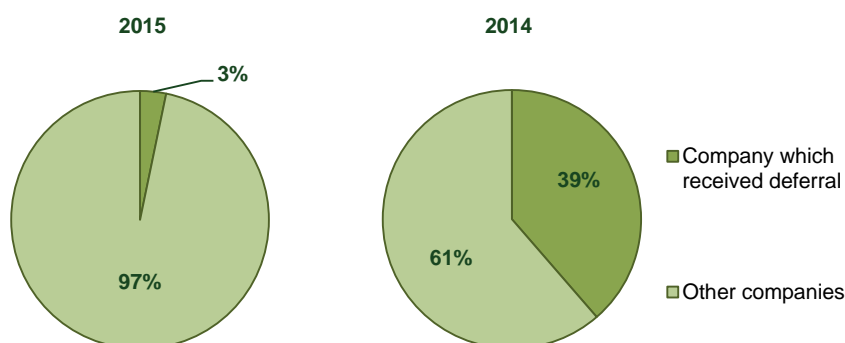
Accounting treatment

16.23 The liability for tobacco products tax arises at the time the specified tobacco products are released for consumption in the State.¹ When tobacco companies purchase and pay for tax stamps, the amounts are recorded by Revenue as deposits on the Revenue Account balance sheet. The deposit amounts are transferred to the Exchequer on a monthly basis. When the specified tobacco products are released for consumption, the deposits recorded in relation to those products are released and recorded as tobacco products tax receipts in that period.

16.24 Figure 16.3 shows a breakdown of the tobacco products deposits held by Revenue at year-end for the tobacco companies who avail of the tax stamp system.

¹ Section 73 (1), Finance Act 2005.

Figure 16.3 Tobacco products deposits of companies availing of the tax stamp system at year-end, 2014 and 2015



Source: Analysis by the Office of the Comptroller and Auditor General

- 16.25** The value of year-end deposits of other participants were broadly similar over both years. The value of the 2015 year-end deposit of the company which received the deferral was just 5% of the value of its 2014 year-end deposit.

Conclusions and recommendations

- 16.26** The company availing of the tobacco stamp liability deferral had an adequate guarantee in place at the time the payment was deferred. The conditions of the guarantee meant that in the event of a default by the company, Revenue could have called on the guarantor to pay up to 3.2 times the amount liable in any calendar month. Consequently, there was no tax at risk.
- 16.27** The legislation allowing Revenue to defer tax stamp liability payments in exceptional circumstances was first introduced in 1994. 2015 was the first time that Revenue exercised this power. Revenue has not established a written procedure for granting such a deferral.

Recommendation 16.1

Where Revenue is utilising powers, particularly for the first time, an appropriate approval process should be established setting out the different authorisation levels required.

Accounting Officer response

Agreed. As noted, this was the first time that the Large Cases Division had invoked the exceptional circumstances provision in the legislation. Whilst the authorisation process was in compliance with the relevant legislation, a procedure setting out the different authorisations required for the use of powers relevant to Tobacco Products Tax legislation will be put in place.

- 16.28** There should be a clear, written record of decisions taken by Revenue, particularly for large amounts which impact on the Exchequer return figures. In this particular case, the payment deferral should have been formally documented showing the recommending officer's business case for the deferral and the approving officer's official sign off.

Recommendation 16.2

Revenue should ensure that all decisions are formally documented including submission and approval of a business case, particularly for large amounts that impact on the Exchequer return figures.

Accounting Officer response

Agreed. Revenue had a robust approval system in place for the making of such decisions. It is acknowledged that there should be a formal process in place for documenting such decisions.