



VAPING PRODUCTS DUTY CONSULTATION

Issued 29 May 2024

ICAEW welcomes the opportunity to comment on the Vaping Products Duty consultation published by HM Treasury and HM Revenue & Customs on 6 March 2024, a copy of which is available from [this link](#).

This response of 29 May 2024 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. ICAEW's Tax Faculty welcomes the opportunity to respond to HM Treasury and HMRC's consultation on the proposed vaping products duty. As a leading authority on taxation, our response focuses on the design, structure, and administration of the new duty, rather than the specifics the vaping industry, which falls outside our expertise.
2. Overall, while we believe the proposed duty rates and structure have the potential to achieve the government's stated objectives, we have identified some potential concerns and limitations:
 - a. The one-off increase in tobacco products duty for cigarettes (£2 per 100 cigarettes) is lower than the new vaping products duty rate for the highest strength vaping products (£3 per 10ml), which could push users of these products (back) towards cigarettes.
 - b. The "cliff-edge" effect, with a 50% tax increase between products either side of the 10mg/ml nicotine threshold, may not provide the most effective incentive for manufacturers to reduce nicotine levels across their entire product range.
 - c. A flat rate per mg of nicotine in the product could provide a more consistent incentive to reduce nicotine consumption – both from the perspective of manufacturers and of consumers.
 - d. Although we cannot say for sure without a detailed behavioural analysis, we consider that the rate structure could lead to some unintended consequences for consumer behaviour, such as consumers switching to higher-strength liquids to obtain better value for money on nicotine content.
 - e. While supporting consistency with other duties (primarily tobacco products duty) where appropriate, we question whether some aspects like mandating monthly returns are necessarily optimal for vaping products. Quarterly returns could reduce the administrative burden on businesses, particularly if the business could choose its return stagger.
3. In summary, while the proposed duty framework is broadly reasonable, there is an opportunity to further refine the duty design to best achieve the policy objectives and avoid potential unintended effects.

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ANSWERS TO SPECIFIC QUESTIONS

CHAPTER 4 – ABOUT YOU

Question 1: Are you:

4. An organisation (professional body)

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

5. Not applicable

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

6. Not applicable

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

7. No

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

8. Yes, we believe the proposed structure of rates has the potential to achieve the stated objectives of the duty, although we do have some concerns, which we have outlined in our answers to Questions 6 and 7.
9. A separate concern relates to the proposed £3.00 per 10ml rate on e-liquids exceeding the nicotine concentration of an average cigarette. While we generally refrain from commenting on specific tax rates, we note that this rate exceeds the proposed one-off increase in tobacco duty of £2 per 100 cigarettes (given the approximate equivalence). This risks inadvertently making smoking more financially attractive for those using high-strength vaping products.
10. We recognise there is a substantial price differential between smoking and vaping, likely mitigating the real-world impact, and therefore believe the risk of high-strength vapers switching back to cigarettes as a result of this tax is therefore relatively low.
11. That being said, a [study in the US](#) found that a \$1 increase in vaping taxes led to an increase in smoking rates among 18-25 year olds, so perhaps the price differential does need to be maintained at all nicotine strengths.

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

12. Yes, we agree that the rates structure will encourage manufacturers to reduce the overall nicotine content of their offering. We acknowledge the precedent set by the soft drinks industry levy, which has a very similar structure to the proposed vaping products duty and [reduced sugar levels in targeted products](#).
13. However, for the reasons set out below, we think the structure may not be the most effective structure for encouraging nicotine reduction in products.
14. The proposed rates structure introduces a significant cliff-edge effect. For example, the 50% tax increase when moving from 10mg/ml to 11mg/ml nicotine strength creates a substantial price disparity between products either side of this threshold.
15. Therefore, it seems very likely that some manufacturers will reduce the nicotine content of some of their products, but this will probably depend on the range and particular strengths of vape liquid that that manufacturer supplies.

16. For example, one popular e-liquid manufacturer in the UK supplies e-liquids at strengths of 3mg, 6mg, 12mg and 18mg. Under the proposals, the first two of these would be taxed at £2.00 per 10ml and the second two would be taxed at £3.00 per 10ml.
17. It therefore seems plausible that this manufacturer could decide to keep manufacturing four different strength e-liquids but change these to, for example, 0mg, 5mg, 10mg, and 18mg. This would reduce the tax on two of the manufacturer's four products without reducing the nicotine content on any of the liquids by more than 3mg.
18. However, a separate popular e-liquid manufacturer in the UK supplies e-liquids at strengths of 5mg, 10mg and 20mg. The first two of these would be taxed at £2.00 per 10ml and the third would be taxed at £3.00 per 10ml.
19. In this case, it seems unlikely that the manufacturer would reduce the nicotine strength of its products. The strength of the 20mg product would need to be halved to move the product into the lower tax band. Even if customers were to accept this change, the company already offers a 10mg product.
20. As there is no benefit of reducing the strength from 20mg to anything above 10mg, the result is likely to be that it wouldn't change the strength of its products at all.
21. A flat tax per mg of nicotine in the product would provide a constant financial incentive to manufacturers to reduce the nicotine content in products of all strengths and not just the products with a strength near a tax threshold.

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

22. As noted above, the structure introduces a significant cliff-edge effect. The 50% tax increase when moving from 10mg/ml to 11mg/ml nicotine strength creates a substantial price disparity between products either side of this threshold.
23. Therefore, consumers purchasing e-liquids with a strength of 11mg/ml (for example) are likely to switch to lower nicotine products. However, to benefit from the tax saving, they only need to switch to a product with a strength of 10mg/ml (and no lower).
24. On the other hand, consumers currently purchasing e-liquids with a strength of 20mg/ml would need to buy a product with half the nicotine content to purchase a product taxed at a lower rate. They may not be willing to reduce the nicotine content so dramatically and, in this case, have no incentive to reduce their nicotine intake at all.
25. Furthermore, some consumers may determine that, due to price increases, they obtain greater value for money in meeting their nicotine needs by purchasing stronger liquids. As a 20mg e-liquid would be the same price as an 11mg e-liquid, the consumer could almost double the nicotine purchased without spending more money.
26. To demonstrate this using the prices set out in Table 3B of the consultation, it would cost the consumer £9.80 to purchase e-liquid containing 200mg of nicotine in two 10ml bottles with a strength of 10mg/ml, but would only cost £6.10 to buy 200mg of nicotine in one 10ml bottle with a strength of 20mg/ml. How consumers would actually respond to this scenario is very difficult to predict without a detailed behavioural analysis, but we wanted to flag a possible unintended consequence of the proposed rate structure.
27. It's also worth noting that consumer behaviour in relation to the tax will be heavily impacted by manufacturer behaviour. Consumers may choose not to buy a lower-strength e-liquid if there is not one available from their favourite brand and/or their favourite flavour.
28. A flat tax per mg of nicotine in the product could be more effective at encouraging consumers to buy lower strength e-liquids as it would (all other factors being equal) always be cheaper to buy lower strength e-liquids (and vice versa).

Question 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.

29. No. Although we appreciate this would align with tobacco products duty, we consider that taxing individuals for personal use would be difficult to administer and enforce, creating unnecessary complexity and disproportionate costs for minimal revenue gains.
30. It's worth noting that historical attempts in the UK to tax homebrewing for personal consumption proved ineffective due to widespread non-compliance.

Question 9: Are there any other factors concerning home production/blending that should be considered? Yes/No. Please specify.

31. We are not aware of any other factors concerning home production/blending that should be considered.

CHAPTER 5 – LIABILITY FOR THE DUTY

Question 10: Do you agree with the proposals on how liability would work? Yes/No. Please provide any reasons for your answer.

32. Yes, we agree with the proposals on how liability would work. It seems logical to mirror the existing excise duty framework for tobacco products, as this provides a familiar system for manufacturers and importers and reduces complexity in administration.

Question 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.

33. Yes, we agree with HMRC's proposal for when products should be charged with the duty. The approach mirrors other excise taxes, creating consistency and familiarity.
34. The proposed point of duty charge is straightforward, and charging at the point of manufacture or import ensures duty collection before the goods enter the market.
35. It is important that the products are allowed to be held in duty suspension by another person after initial manufacture or import, as noted in paragraph 5.5 of the consultation document, as the brand owner may not always be the manufacturer of the product.

Question 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.

36. Yes, we consider that premises used for further processing or packaging should be required to register or seek approval to ensure adequate control of supply chains, in line with other excise duties.

Question 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?

37. Yes, we agree with the suggestion on who should be liable to pay the duty.
38. As noted above, it is important that the brand owner may be liable to pay the duty if they move the goods from the registered premises of the manufacturer to their excise warehouse.

Question 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.

39. We have no evidence to provide.

Question 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, and you think there should be any exceptions to this, please explain why.

40. Yes, we agree that products destined for general sale on the UK market should not qualify for any reliefs or exemptions from the duty. Exemptions and reliefs would complicate the duty's design and administration, creating unnecessary complexity for HMRC and businesses, and potentially creating loopholes and opportunities for avoidance.

Question 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.

41. We do not consider that any vaping products should be eligible for relief or exemption. However, if exemptions were going to be introduced, the only product we are aware of that could be argued should be eligible for exemption would be vaping products used in academic studies.

CHAPTER 6

UK MANUFACTURE: REGISTRATION, RETURNS AND OTHER REQUIREMENTS

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

42. We are unable to provide this information.

Question 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.

43. We understand that brand owners that subcontract manufacturing to a third-party manufacturer may carry out various processes at different premises to the initial manufacturer. These processes might include decanting, rebottling, re-labelling, re-boxing and/or stickering.

Question 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.

44. We are not aware of any processes that should not be required to take place on premises registered or approved by HMRC.

Question 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.

45. No.

Question 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.

46. We are unable to answer this question.

Question 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.

47. We understand that registrations to cover more than one premises owned by a single entity will be needed as large vaping businesses have multiple operations, with production processes often split between various premises.

Question 23: Do you agree these registration and deregistration provisions are appropriate? Yes/No. If not, please explain your answer and provide any supporting evidence.

48. Yes, the registration and deregistration provisions seem appropriate.
49. Clear criteria for refusal or revocation should be set out to provide businesses with a clear understanding of expectation, and a formal appeals process should be established.

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

50. Some businesses might seek assistance from accountants, tax advisers or other consultants to ensure they understand the registration requirements and complete the process correctly for which they would incur a one-off cost.
51. Additional costs might include physical alterations to premises, such as security installations, to comply with additional excise duty requirements.

Question 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.

52. Some businesses might engage an agent to complete and file their vaping products duty returns, which would be an ongoing cost. Even if compliance is completed in-house, this is likely to require businesses to recruit additional resource or train existing employees.
53. Some businesses might need to upgrade their inventory management or accounting software to track vaping product volumes and duty payments, leading to additional software purchase or development costs.

Question 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.

54. Yes, we expect the return and payment arrangements are appropriate for UK manufacturers of vaping products as they align with the established practices for tobacco products duty.
55. That being said, it should be considered whether there is an obvious need for monthly returns or whether quarterly returns would be suitable, as this would reduce the additional administrative burden on businesses from this new tax.

Question 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.

56. We would suggest that the return and payment become due on the last day of the month following the end of the accounting period. This would align with the most recent indirect tax introduced (plastic packaging tax).
57. It could also be considered whether there an extended period for submission and payment of the first return is appropriate, as this is a new tax.

Question 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.

58. We are not aware of any other circumstances where a claim to a repayment of duty should be permitted.

Question 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.

59. Not applicable.

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

60. Although we are not a tax agent, we represent tax agents. We would expect some of our members to offer VPD registration and compliance services to customers.

Question 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.

61. We are unable to comment on whether the requirements will be straightforward to comply with, but we note that they generally align with existing excise duty regimes and do not seem unreasonable.

CHAPTER 7 – TREATMENT OF IMPORTS, EXPORTS, AND DUTY SUSPENSION

Question 32: Is this proposed approach to imports appropriate for vaping products? Yes/No. If not, please explain your answer and provide any supporting evidence.

62. Yes, the proposed approach to imports for vaping products seems appropriate. It aligns with established procedures for other excise goods.

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

63. We are unable to comment.

Question 34: Is there 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.

64. Although we do not have expertise in the supply chains of vaping products, we consider it likely that there will need to be additional arrangements for other persons that may have a role in import processes.

65. The primary responsibility for imported vaping products may lie with the importer but other entities like customs brokers, freight forwarders and fulfilment houses are likely to play a crucial role in the import process. Therefore, it is crucial that systems are designed to facilitate effective intermediation.

Question 35: Are the proposals related to duty suspension appropriate? Yes/No. If not, please explain your answer and provide any supporting evidence.

66. Yes, the proposals related to duty suspension are appropriate. They align with established procedures for other excise goods.

Question 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.

67. We are unable to provide evidence of a commercial need for duty suspended storage, but the proposals allow businesses to defer duty payments until the product is ready for wholesale sale, aiding cash flow through the supply chain.

Question 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.

68. Yes, we agree that EMCS should be used for duty-suspended movements of vaping products in the UK. It is a well-established system for tracking and validating the movements of duty-suspended excise goods.

69. We are not aware of any specific reasons why vaping products should be excluded from the EMCS.

Question 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.

70. Not applicable.

Question 39: Should there be a quantitative personal allowance for vaping products? Yes/No Please provide evidence to support your answer where possible.

71. Yes, it would be sensible for there to be a quantitative personal allowance for vaping products to align this with the existing system for alcohol and tobacco. This would create consistency, avoid confusion for travellers, and ensure that those carrying a reasonable volume of e-liquid for personal use are not penalised.

72. Such an allowance would be easier for customs officials to understand and enforce than a monetary allowance.

Question 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.

73. Yes, for consistency and simplicity, the government should apply similar arrangements to vaping products shipped as stores as are currently applied for existing excise duties.

CHAPTER 8 – COMPLIANCE AND ENFORCEMENT

Question 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.

74. There is a risk of mislabelling of products regarding nicotine content, particularly around the proposed thresholds of the tax.

75. It should be considered whether mandatory independent testing of nicotine content should be introduced alongside enhanced penalties for mislabelling.

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

76. We are not best placed to answer this question.

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

77. Again, we are not best placed to answer this.

Question 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.

78. We understand that with the appropriate equipment and expertise, it is relatively straightforward to test the nicotine content and strength of vaping products.

Question 45: Are there any industrial uses for nicotine, other than the manufacture of tobacco, vaping and smoking cessation products? Please provide evidence where relevant.

79. We are not aware of any industrial uses for nicotine other than the manufacture of tobacco, vaping and smoking cessation products.

Question 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.

80. Yes, the suggested approach to compliance and penalties seems appropriate as will align with existing HMRC regimes.

Question 47: Should a track and trace system be introduced for vaping products? Yes/No. Please explain any reasons for your answer.

81. Although we would recommend further consultation with the vaping industry on this subject, we would be inclined to support the introduction of a track and trace system to:
- a. Combat illicit trade;
 - b. Protect consumers (from unsafe or counterfeit products);
 - c. Inform policy decisions and identify areas for improvement; and
 - d. Align with tobacco regulations.

Question 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.

82. Again, we would recommend further consultation with the vaping industry on this subject, but we would be inclined to support the use of fiscal marks for vaping products on the basis that this would align with the position for cigarettes, support enforcement officials to identify duty-paid products and deter the sale of illicit or counterfeit products.
83. That being said, we note the tax values involved in the proposed vaping products duty is significantly lower than those of tobacco products duty and this therefore may not be a proportionate or cost-effective solution.

CHAPTER 9 – UNDERSTANDING COMMERCIAL PRINCIPLES

84. As we are not responding on behalf of the sector, we are unable or have decided not to respond to questions 49 to 57 regarding commercial principles and the UK vaping industry.

Question 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.

85. Yes, we believe the introduction of the vaping products duty will lead to some consumers switching to alternative nicotine containing products.
86. We understand there is not yet conclusive evidence directly linking vaping taxes to a large-scale shift towards other nicotine products, but in some EU countries (notably Sweden)

where vaping taxes have been introduced (or increased), there has been a noticeable rise in the use of alternative nicotine containing products, particularly nicotine pouches.

87. As already noted, a **study in the US** found that a \$1 increase in vaping taxes led to an increase in smoking rates among 18-25 year olds.

CHAPTER 10 - ASSESSMENT OF IMPACTS

Question 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?

88. We recommend consideration of anti-forestalling measures to address potential stockpiling by retailers. Specifically, we believe some larger retailers could acquire large quantities of vaping products before the new duty takes effect, allowing them to sell VPD-free stock for an extended period. This could create an uneven playing field and undermine the intended effects of the duty.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**.