



International Travel Retail Confederation

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Submission to the  
Commission of the European Communities  
on the  
Review of Articles 7 – 10 of  
Council Directive 92/12/EEC, on the general  
arrangements for products subject to excise duty and  
on the holding, movement and monitoring of such  
products

## **The Commission of the European Communities**

### **Review of Articles 7 – 10 of Council Directive 92/12/EEC**

#### **1. Introduction.**

Travel Retail within the EU, *the sale of taxed and duty paid goods to consumers travelling between Members States by air and sea*, has emerged primarily as a result of the ongoing desire of travellers to continue to purchase products in this unique shopping environment.

The International Travel Retail Confederation represents the interests of companies operating in the European Travel Retail trade. More details about the ITRC can be found at Appendix A.

#### **2. Legislative Background.**

In its notice concerning the rules to be applied after the ending of intra-EU duty free sales<sup>1</sup>, the Commission of the European Communities (CEC) stated that the regulations are those provided by Directive 92/12/EEC, primarily Article 7 (plus Article 22(3) as it relates to the reimbursement of excise duties).

The rules relating to goods supplied *for sale at airports and seaports* are “According to existing Community VAT and excise legislation...” and are subject to both VAT and excise rates applicable where the shop is situated, in the same manner as other national retail sales.

However, the legislative text of Directive 92/12/EEC relates primarily to the commercial movements of goods only, although the Directive also mentions the position relating to private individuals. The Directive omits provisions for the actual retailing of excise products, where sales take place in a travel environment between member states (*except when transported personally by an individual for their own personal consumption*), and particularly to sales made by mobile shop operators, such as airlines and ferry companies.

This *unique* act of retailing to travellers in a controlled tax-paid situation is not specifically provided for under the Directive and this omission reflects a significant legal and administrative structural weakness.

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<sup>1</sup> Commission notice concerning the VAT and excise rules to be applied from 1 July 1999 by the suppliers of goods sold on board ferries and aircraft or in airports to passengers travelling within the European Union. (1999/C 99/08) April 1999.

### **3. Legislative Developments and Derogations.**

The strict application of the provisions of Directive 92/12/EEC would in fact make it impossible for any duty and tax paid retail sales to be made by mobile shop operators. Recognising this fact, the Commission and Member States have already agreed a number of derogations from the strict application of the legal text. These include the following:-

- (i) Operators need not pay excise duty on entering another Member State's territory when carrying duty-paid excise goods, provided that no attempt is made to sell them to the public, and that the goods remain on board the vessel or aircraft. The goods would simply be regarded as being in transit.
- (ii) Operators need only concern themselves with the excise duty rates of the country of departure and that of the country of destination. Retail sales made during the traversing or over flying of an intermediate Member State's territory need not apply the excise duty rate of that intermediate State.
- (iii) On any intra-EU journey, the operators themselves could decide which excise rate to apply to sales, either that of the country of departure or destination. However, whichever rate was used could not apply in the territorial waters or airspace of the other country.
- (iv) A "simplified procedure" was introduced, relieving operators of the need to apply local excise duty at the point of loading the ship or aircraft. However, such duty suspended supplies would have to be entered into the fiscal state of the country of destination before sales can be made at that country's excise rates.

Apart from these EU-wide derogations, it should be noted that some Member States have amended their fiscal regimes to cope with Travel Retail operations nationally. Some have introduced either definitive or transitional arrangements that provide exemptions to the rules applicable on the domestic market for the Travel Retail trade. This has created an arbitrary, rather than a consistent EU regulatory situation for Travel Retail, *which creates burdens on business*.

Some have introduced differing licensing rules applicable for airport shops compared with domestic retail outlets and others have established special warehouse regimes that allows the holding of certain excise goods under duty suspension, including, in some instances, separate rules applicable to products normally requiring fiscal stamps.

In the UK, Customs and Excise have implemented a number of changes to procedures arising from their 2001 review of the post intra-EU duty-free successor regime<sup>2</sup>. Whilst these have eased some of the problems, major difficulties remain, particularly for airlines.

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<sup>2</sup> Post Implementation Review of the Intra-EU Successor Regime, Report and Recommendation, March 2001, HM Customs and Excise

#### **4. Travel Retail: Problem Areas**

The ITRC acknowledges the efforts made thus far by the Commission and by Member States to ease the impossible conditions that would arise from the strict application of Directive 92/12/EEC. The easements outlined above have enabled some operators, notably those in the maritime sector, to develop a healthy and viable travel retail business. However, major problem areas remain, particularly for airlines that are not currently undertaking any in-flight sales of duty-paid excisable goods because of the practical difficulties. The principal problem areas are as follows:-

##### **(a) Clearance of Excise Goods**

The difficulty of entering excise goods that have been loaded on a duty-suspended basis (using the simplified procedure) into the fiscal state of the country of destination represents a major obstacle to the Travel Retail trade.

For example, the charter airlines in the UK wish to sell duty paid alcohol in flight on journeys to and from lower taxed countries such as Spain. However, to do so they have to fly the goods to Spain, unload them, store them with a registered local warehousekeeper for 48 hours, and then reload them on to the aircraft before any sales could be made. Such complex requirements render the whole operation totally impractical and uneconomic.

For this reason, UK Customs have been negotiating with the Spanish authorities on a bilateral agreement that would enable the goods to be cleared on board the aircraft as soon as it lands in Spain, without the need for off-loading. However the negotiations, which started in June 2000, have now been on-going for 2 years and still have not been finalised.

It is imperative that EU-wide arrangements are swiftly introduced that will permit the immediate clearance of such goods on board aircraft and ships. The introduction of such arrangements will, however, still require operators to transport goods to the country of destination before they can be subsequently sold.

##### **(b) Tax Stamps and Fiscal Markers**

The use of tax stamps and fiscal marks on excise products by a number of Member States creates significant operating difficulties for travel retail operators. At the very least, such practices require operators to carry dual stocks, and in many cases, particularly with regard to tobacco products, operators are simply unable to sell. Moreover, national tax stamps and fiscal marks preclude operators from using the simplified procedure, i.e. they remove the ability to load supplies on a duty-suspended basis.

(c) Excessive Documentation

The requirement for an Accompanying Administrative Document (AAD) for each consignment of excise goods creates an enormous administrative burden for travel retail operators. Bearing in mind that many consignments will be of small quantities of excise goods we believe that much greater use should be made of traders own commercial records for revenue/audit purposes.

### **5. Travel Retail – A Unique EU Market.**

The Travel Retail trading environment that has emerged post abolition of intra-EU duty free in 1999, primarily as a result of the ongoing desire of travellers to buy products in this unique shopping environment, is only accessible to bona fide travellers between Community Member States.

For those products subject to excise duties, some sectors of the trade benefit from the disparity in tax rates applicable between different EU Member States, but many operators are currently not retailing to intra-Community travellers due to problems associated with the provisions of Directive 92/12/EEC.

We submit that the administrative, legislative and financial burdens suffered by the Travel Retail trade, as detailed in our previous Discussion Document,<sup>3</sup> could be alleviated through the recognition in law of its status as a unique market sector within the European retail trade environment.

### **6. Travel Retail – Possible Solutions.**

As part of any review, the ITRC believes it is pertinent to consider both practical short-term methods of removing obstacles to Travel Retail operations as well as more innovative possibilities for the longer-term.

In relation to short-term operating solutions, there are a number of remedies that the ITRC believes would alleviate the commercial, legal and administrative problems being encountered by its members and the wider industry across the EU.

The most immediate and pressing need is for a EU-wide agreement on the simplification of the procedures for entering excise goods loaded under duty suspension into the fiscal state of the country of destination.

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<sup>3</sup> The relationship between Council Directive 92/12/EEC, on the general arrangements for products subject to excise duties and on the holding, movement and monitoring of such products and the industry retailing to travellers by sea and air within the European Union. ITRC Ref. WGR 17/00 Fn, 7<sup>th</sup> November 2000

*We suggest that all EU states adopt the simple practice that such goods can be cleared immediately on arrival, without the need to offload them from the ship or aircraft*

Such goods are not destined for consumption in the home market and the current requirements are unnecessarily onerous; they can simply be regarded as being in transit. The ITRC also believes that this could be achieved through administrative agreement between Member State's representatives at Commission Expert Committee level, without the need to resort to legislative amendments.

The introduction of the principle of clearance on board for mobile travel retail operators by all EU states, would remove one of the principal remaining obstacles to trade for the travel retail business.

*From the ITRC's perspective, this must be the number one priority to facilitate trade.*

The ITRC believes that intermediate solutions should concentrate on the operational practicalities of managing duty suspension stocks, their movement and their release for sale, as well as product labelling in Travel Retail.

A more consistent and liberalised approach, using modern procedures, in the controlled environment of this unique market, would facilitate trade in both land based and mobile shop situations and provide legal certainty. The details of these possible solutions are discussed at Annex 1.

Other more innovative solutions are possible as well. For instance recognition and acceptance of the special nature of the Travel Retail trade, as a genuine and unique "Single Market", could offer the right environment for consolidating or applying a new rate structure across this self-contained and controlled market place.

This could provide a simple operational solution. Recognising that such proposals would be unlikely to achieve sufficient support at Council to become a reality in the near term, they should, nevertheless, be critically analysed for the future and two possible solutions are outlined at Annex 2.

## **Practical Operational Solutions to Facilitate Travel Retail Trade**

### **i. Supplies under duty suspension – mobile operators.**

The principal difficulty encountered by the Travel Retail trade, particularly the operators of mobile shops on board aircraft and ships, is the current problems associated with managing the supply, movement, holding and release for sale of products subject to excise duties arising from the application of Article 7 of Directive 92/12/EEC.

We have already suggested that an immediate priority is to ensure the clearance on board the aircraft or ships of excise goods arising on a duty-suspended basis. However, given the unique nature of the travel retail trade, a more effective solution would be to allow mobile shop operators to receive all excisable products under duty suspension and to be able to carry such goods on board of ships and aircraft, with duty suspended, until the point at which the retail sale is made to the traveller.

Excise duty payable would accrue to the Member State in whose fiscal territory the retail sale is made. (Where the retail sale is made in waters and airspace outside the fiscal territory of any Member State, excise duty would accrue to either the Member State of departure or destination, at the choice of the operator) Commercial documentation, together with current arrangements under simplified procedures, would provide the necessary audit trail to secure the correct accounting of excise revenue to the appropriate Member State.

Such an arrangement would relieve operators of the significant operating difficulties involved in entering excise goods into another Member States territory. Even if clearance on board the ship or aircraft is available (as above), operators still have the burden of physically transporting the goods to the member State of destination before any sales can be made. This is a particular problem for airlines. Given that sales of such goods will only be made in a travel retail environment (i.e. on board a ship or aircraft), and not in any domestic market, it is logical that operators should be able to sell direct from duty-suspended stock.

### **ii. Supplies under duty suspension - land based operators.**

The principle of duty suspended supplies for all products subject to excise duties should also be extended to land based shops at airports and seaports, but only where such shops are for bona fide travellers, and there is a mix of EU and non-EU traffic.

Current exemptions provided in some Member States allows products to be supplied, warehoused and managed by airport shop operators under duty suspension in a single stock holding, with the retail sales point being the stage at which a duty liability is incurred for sales made to travellers within the Community.

Clear audit trails ensure that excise accrues on duty paid sales to travellers within the Community, whilst allowing continued excise free sales to qualifying travellers to third country destinations.

These exemptions clearly indicate that it is possible to manage such an arrangement to the satisfaction of national fiscal authorities.

Currently, with the few noticeable exemptions mentioned above, operators must segregate, and in some countries warehouse separately, products subject to excise duties held duty free and duty paid.

For land based operators, the supply of duty suspended stock for all products provides the basis for efficient warehouse management and, with duty suspended until the final retail sales point (rather than when released from the warehouse), recognises the unique market environment for retailing to travellers by sea and air.

### **iii. Fiscal / Tax Stamps and Markers.**

The remedy proposed for mobile operators, to allow clearance on board of products subject to excise duties and the application of the principle of the duty liability accruing at the point of retail sale, would not apply where a duty liability is incurred at the point of manufacture (or import into the Community) through the application of a fiscal or tax stamp or marker.

Under present circumstances, it is currently not feasible for airlines to include tobacco products within their retail offer to travellers and it remains highly unlikely that, even with the implementation of remedies suggested in this paper, that situation would change.

Airlines would, however, consider the addition of alcohol products to their in-flight sales programme should solutions to current problems be found.

In circumstances where a duty liability is incurred at the point of retail sale on board of mobile operators, and a fiscal marker is normally required to indicate the duty paid status of such products, it is recommended that as, in real terms, the application of such a fiscal / tax marker (stamp) is not necessary to provide the required audit trail for the fiscal authorities to account for the duty accruing, such a requirement could be waived in favour of a warranty provided by the operator.

A similar arrangement could also be implemented for land-based operators of retail outlets where they are responsible for applying the fiscal marker at the retail sales point.



## **Innovative, Longer-Term Possibilities**

### **a. Single Rate within Travel Retail**

The ITRC suggests that this unique Travel Retail market could be the first commercial sector within the EU Single Market to be subject to the full implementation of a harmonised indirect taxation structure, with a single rate of duty applicable to all products subject to excise taxes, regardless of the Member State in which the products are retailed.

This would provide legal certainty and “a level playing field” for all companies operating in the Travel Retail trade. Products subject to excise duties and released for Travel Retail sale duty paid in one Member State could be sold to travellers on any intra-EU journey, as the excise duty rates would be identical, regardless of where the products are finally retailed to the traveller. The movement and sale of all excise goods within Travel Retail would therefore be on a duty-paid basis, with the duty accruing to the Member State in which the operator is based.

The rate of duty applicable to products subject to excise taxes retailed in this unique Travel Retail market would be the minimum level by individual product category in force within the Community.

### **b. Corresponding Rates between Two or More Destinations**

An alternative fiscal strategy that could be suggested to minimise the difficulties encountered by Mobile Shop Operators would be to seek agreement for a corresponding duty rate for products subject to excise duties, applicable to both directions of a particular journey, at the lowest rate between the departure and destination Member State.

Again, the fiscal income from these sales would accrue to the country of departure and simplified procedures would allow for the movement of product between the designated Member States, without the need for re-entering the duty suspension system once released for Travel Retail sale duty paid.

With products subject to excise duties being released duty paid for retail sale in the departure Travel Retail market attracting a corresponding duty rate to that of the country of arrival, there would be no requirement to enter product remaining in stock (currently classified as in-transit in some Member States) into the fiscal regime of the Member State of arrival, for eventual sale to returning or departing travellers.

The duty remitted to the originating Member State could be refunded and subsequently accrued to the arrival Member State through simple accounting procedures.



## **The International Travel Retail Confederation (ITRC)**

The International Travel Retail Confederation (ITRC) is an umbrella organisation that operates at the EU institutional level. It represents the interests of companies operating in the European Travel Retail trading environment that emerged upon abolition of intra-EU tax and duty free sales on June 30<sup>th</sup> 1999. It also represents the interests of these and other companies trading in the remaining EU duty free business to non-EU countries and between those countries not members of the EU, including countries in accession negotiations.

The ITRC is a confederation of national associations whose members are the individual companies operating in European Travel Retail and duty free markets and includes membership from all EU Member States, excluding Austria and Sweden, plus Switzerland, Norway, Bulgaria and Malta. It is anticipated that a number of countries in accession discussions with the EU will become members in the near future, i.e. Cyprus, the Czech Republic, etc.

The funding of the ITRC is through annual subscription from the national associations, who themselves are funded through direct membership subscriptions from individual companies operating in the Travel Retail and duty free trade, including airports, scheduled and charter airlines, ferry companies, retail shop operators, suppliers, distributors and their agents.