



German Bundestag decides on higher tobacco tax – nicotine-free products also taxable in future

1 Overview

In an overnight meeting on 11 June 2021, the German Bundestag decided on far-reaching amendments to the Tobacco Tax Act with the so-called Tobacco Tax Modernisation Act (TabStMoG). The German Federal Government previously submitted a corresponding draft bill, including official justification of the law, on 19 April 2021. The Finance Committee subsequently further tightened the planned changes contained in the government draft. The reform is aimed at increasing the tobacco tax for conventional cigarettes, cigars, cigarillos and fine-cut tobacco, as well as significantly higher taxation of heated tobacco and water pipe tobacco. In future, substances used for e-cigarettes will also be taxable as a new taxable item, even if these do not contain nicotine. The German Federal Council's decision is scheduled for 25 June 2021. However, its approval is considered to be as good as certain.

2 Increase of tobacco tax for cigarettes and fine-cut tobacco

As from 2022, smokers will have to pay more. The new law provides for tobacco tax increases for cigarettes and fine-cut tobacco in four stages over a period of five years, starting from 2022. The tobacco tax for a pack of twenty cigarettes will increase by an average of 10 cents next year. As from 2023, a further 10 cents will be added, and in 2025 and 2026 even 15 cents per pack. These measures will be accompanied by the adjustment of the existing minimum tax for cigars, cigarillos and pipe tobacco, which will take place as from 1 January 2022 and 1 January 2023. The increase is intended, in particular, to ensure equality in tax treatment and consumer health protection. However, the German Federal Government also expects considerable additional tax income.



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3 Increase of tobacco tax for heated tobacco and water pipe tobacco

The tax increase particularly affects heated tobacco (so-called heat-not-burn products) and water pipe tobacco. In the legislation, heated tobacco is defined as “smoking tobacco portioned by the piece and individually wrapped, which is capable of being consumed by inhalation of an aerosol or smoke produced in the device”. As from 1 January 2022, an additional tobacco tax will be introduced for heated tobacco, to the effect that it will, in future, be taxed like cigarettes. According to the legislator, heat-not-burn products replace a classic cigarette and lead just as much to nicotine addiction which is harmful to health. To date, the significantly lower tax rate for smoking tobacco, falling within the scope of the category pipe tobacco, has also applied to heat-not-burn products. In 2022 the tobacco tax for a EUR 6 product containing 20 pieces (6 grams) will increase from 88 cents to EUR 1.86. In 2026 the tax charged will already be EUR 2.27.

The law also provides for an additional tobacco tax for water pipe tobacco. The objective of the additional taxation is to protect both minors and health. In addition to classic water pipe tobacco, products for water pipes, not containing tobacco, are also subject to taxation. To date, water pipe tobacco, being classified as pipe tobacco, has also been taxed at a considerably lower rate. The amount of the additional tax will initially be EUR 15 per kilogram in 2022 and will rise to EUR 23 per kilogram by 2026.

4 Tax liability also for substances contained in e-cigarettes

There are also significant changes concerning the substances used in e-cigarettes (so-called substitutes for tobacco products). As from 1 July 2022 these will constitute a new taxable item and will be subject to tobacco tax. In e-cigarettes, a substance (e.g. liquid) is heated and the wet vapour thus produced is inhaled by the consumer. It is hoped that the consumption of these products, which are classified as equally harmful to health, will be reduced as a result of taxation. Against this background of existing potential health risks, both nicotine and nicotine-free substances will be taxed. The taxation will be carried out by a purely specific tax rate based on the volume (millilitres of the substance). The tax rate will initially be 16 cents per millilitre in 2022 (as from 07/2022) and 2023 and then gradually increase to 32 cents per millilitre as from 2026.

5 Consequences for the practice

The new regulations will result in considerable financial consequences for both business and consumers and have already been widely criticised. Within the framework of the taxation procedure, taxable persons will be subject to obligations to cooperate, the fulfilment of which obligations will result in considerable bureaucratic effort on the part of affected companies. This is due to the fact that, in contrast to other types of excise duty, tobacco tax must be paid using tax stamps. Manufacturers of substances for e-cigarettes should, in particular, deal with their upcoming tobacco tax obligations in good time and set up new processes to facilitate this. The tobacco industry also continues to point out that, in the absence of combustion, e-cigarettes and heat-not-burn products contain significantly fewer harmful substances than classic cigarettes. Even more critical in this context is the taxation of nicotine-free products. It is therefore left open to question, as to what extent the objective of health risk prevention can be achieved through these tax increases. In addition, the unequal taxation of novel products in the EU could prove to be an incentive to increasingly resort to cheaper products from other EU countries that are not taxed in Germany. The long ago announced amendment of Council Directive 2011/64 EU of 21 June 2011 on the structure and rates of excise duty to be applied to manufactured tobacco, aimed at ensuring uniform taxation throughout Europe, has still not transpired. In the meantime, Member States continue to enact their own regulations for novel products, which contribute nothing to the advancement of the harmonisation of tobacco taxation within the EU.