



## Tobacco tax on substitutes for manufactured tobacco as from 1 July 2022

### 1 Overview

On 1 January 2022, the Tobacco Tax Modernisation Act came into force. This reform has led to an increase in tobacco tax on cigarettes, cigars, cigarillos and fine-cut tobacco, as well as to the significantly higher taxation of heated tobacco and water pipe tobacco (see KMLZ Customs Newsletter 02 | 2021). Another important change is the new taxation of substances for e-cigarettes. These are also subject to tobacco tax as from 1 July 2022. Due to the new tobacco tax on so-called “liquids”, many taxable persons will now, for the first time, have to deal with tobacco tax and meet the associated obligations. The tax authorities have already published an information letter covering the details of the new taxation and in June 2022 the administrative regulation “Tobacco Tax / Release for free circulation” was updated.

### 2 Tax liability for tobacco substitutes (liquids)

Both nicotine and nicotine-free liquids for e-cigarettes are now subject to taxation. All finished products, pure nicotine solutions or nicotine blending components, as well as blended components in containers with “empty space” to which further blended components can be easily added (so-called “short-fill” or “long-fill” products) are considered to be substitutes for tobacco products. The nicotine-free blending components (glycerine and propylene glycol), as well as flavours are widely used in many products, far beyond their use in e-cigarettes. They only constitute “substitutes for manufactured tobacco” if they are intended for use in e-cigarettes. The intended purpose is determined on the basis of the market placement of the product, the presentation or design of the retail package, the intended purpose of the product and the associated consumer expectation. The intended purpose must therefore be externally recognisable and verifiable.



Dobrinka Atanasova  
Rechtsanwältin,  
Fachanwältin für Steuerrecht

+49 (0) 89 217 50 12-55  
dobrinka.atanasova@kmlz.de

The tax will be assessed based on a purely specific tax rate calculated pursuant to volume (millilitres of substance). The tax rate will initially be 16 cents per millilitre in 2022 (as from 07/2022) and 2023 and then will gradually increase to 32 cents per millilitre as from 2026. As is the case with other tobacco products, the tax must be paid using tax stamps. The tax stamps must have already been used, i. e. cancelled and affixed, when the product is released for free circulation. However, tobacco substitutes are only subject to tobacco tax if they are released for free circulation after 1 July 2022. An additional taxation of so-called old products is not provided for and leads to the fact that, for example, the products currently on the market can also be sold beyond this date. From 13 February 2023, however, the accrual of tax shall also be linked to the possession of taxable items for which no tax has yet been levied in the tax territory. This will inevitably lead to an additional taxation of old goods that have not yet been sold. The commercial purchase, as well as the distance sales from other Member States with goods released for free circulation are no longer possible without German tax stamps as from 1 July 2022.

### 3 Other obligations in connection with the taxation of substitutes

For the production and transport of substitutes under excise duty suspension, an approval for excise duty purposes is generally required. In addition, certain transport documents are required for the transport of substitutes for tobacco products and/or obligations to provide proof must be fulfilled. These are governed by the provisions of the Coffee Tax Act. This is due to the fact that the taxation of substitutes for tobacco products is not harmonised under Union law. It is a national excise duty. Therefore, the transport under duty suspension cannot be carried out via the EMCS (Excise Movement and Control System), as is the case with harmonised excisable goods. Instead, for example, for transport under duty suspension to another Member State, accounting evidence is required, as is the case for the transport of coffee. For the transport under duty suspension from other Member States, no formal procedure is provided for. The duty suspension procedure ends when the goods are placed in the tax warehouse in the tax territory.

Substitutes for tobacco products may only be released for free circulation in closed retail packages ready for sale. The ban on tying and packaging of additional products already established for tobacco products also continues to apply. Whereas it was previously possible to package e-cigarettes and liquids together as “starter kits”, this is now excluded under the new legislation. No items other than the substitutes for tobacco products may be enclosed in the retail packages that are released for free circulation under tax law. The retailer is also not permitted to add any items when selling to consumers and may not combine the sale with the sale of other items.

### 4 Consequences for the practice

The taxation procedure includes considerable obligations to cooperate and to notify. Compliance with these new requirements will involve significant effort on the part of taxable persons who have not previously had to deal with excise duties. The changes will impact many sectors such as product marketing, packaging design and pricing. The establishment of new processes is compelling. Violations of the tobacco tax regulations might result in criminal consequences and fines. The long awaited amendment of the Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, which is supposed to ensure uniform taxation of such new products throughout Europe, has not yet eventuated. The EU Commission's proposal has been announced for the end of the year and may bring with it a new need for action by the Member States.