

Unofficial translation

The Swedish Ministry of Finance
Customs and Excise Department

Fi2020/02469/S2

New excise duty on other forms of tobacco

May 2020

The principal content of the memorandum

The memorandum proposes introducing an excise duty on so-called other forms of tobacco into the Act on Tobacco Excise Duty. The primary aim of the excise duty is to deal with the problems involving the demarcation of and differences between excisable smoking tobacco and non-excisable tobacco, and to counter fraud. The tobacco that is proposed to be taxed is called “other forms of tobacco”, which means tobacco which is not part of a living plant and which is not excisable as cigarettes, cigars, cigarillos, smoking tobacco, snus or chewing tobacco. The amount of excise duty to be paid on other forms of tobacco shall be the same as for smoking tobacco. Regulations on excisability and the time point at which the excise duty liability becomes chargeable shall be the same as for snus and chewing tobacco. The same applies to regulations for stock keepers. Approved stock keepers can make a deduction for excise duty already paid on smoking tobacco used in the manufacture of tobacco products which are subject to the Act on Tobacco Excise Duty. Specific regulations on distance selling of snus, chewing tobacco or other forms of tobacco are introduced. Regulations on requirements for notification or approval and pledging security are introduced for sellers engaged in distance selling of snus, chewing tobacco or other forms of tobacco. It is also proposed that such regulations are introduced for persons who are not approved as stock keepers and who commercially import or receive snus, chewing tobacco or other forms of tobacco in a manner other than by distance selling. A new provision on liability to pay excise duty is introduced for persons who commercially possess snus, chewing tobacco or other forms of tobacco without excise duty having been declared on the goods in Sweden. The measures are complemented by the scope of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties being extended to include the movements of snus, chewing tobacco and other forms of tobacco which are subject to the notification obligation and the obligation to pledge security. The amendments are proposed to enter into force on 01 June 2021 for provisions regarding approved stock keepers, registered distance sellers and supplements to the Tax Procedures Act; otherwise the amendments will enter into force on 01 July 2021.

The memorandum also proposes some consequential amendments to the Tax Procedures Act in connection with the Swedish Council on Legislation’s consultation response “Some Amendments to the Act on Waste Excise Duty”.

Unofficial translation

Table of contents

1	Legal wording	5
1.1	Proposal regarding an act to amend the Act (1994:1563) on Tobacco Excise Duty ..	5
1.2	Proposal regarding an act to amend the Act (1994:1551) on Freedom from Taxation Upon Import, etc.	15
1.3	Proposal regarding an act to amend the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties	19
1.4	Proposal regarding an act to amend the Act (1999:445) on Export Shops	23
1.5	Proposal regarding an act to amend the Act (2001:181) on Data Processing in the Swedish Tax Agency's Tax Operations	25
1.6	Proposal regarding an act to amend the Tax Procedures Act (2011:1244)	27
2	Excisable tobacco	31
2.1	Background and applicable law	31
2.2	Regulation and taxation of other forms of tobacco in some other EU member states	33
3	Taxation of other forms of tobacco	33
3.1	Handling of other forms of tobacco	33
3.2	Taxation and demarcations	34
3.3	Tax rate	36
3.4	Taxpayer and when the liability to pay excise duty becomes chargeable	37
3.5	Right of deduction and the liability to pay excise duty during commercial manufacture	39
3.6	Improved conditions for checking snus, chewing tobacco and other forms of tobacco	41
3.7	Some supplementary amendments	46
3.8	Entry into force and transitional provisions	49
4	Impact assessment	50
4.1	Aim and alternative solutions	51
4.2	Impacts on public finances	52
4.3	Impacts on prices	54
4.4	Impacts on public health	54
4.5	Consequences for companies	54

Unofficial translation

4.6	Consequences for authorities and the general administrative courts	55
4.7	Other impacts	57
4.8	The proposal's compatibility with EU law	57
4.9	Entry into force and information initiatives	57
5	Consequential amendments due to the introduction of an opportunity to obtain a refund in connection with recycling at landfills	58
5.1	Background and applicable law	58
5.2	Consequential amendments to the Tax Procedures Act	59
5.3	Impact assessment	59
5.3.1	Aim and alternative solutions	59
5.3.2	Impacts on public finances	60
5.3.3	Impacts on companies	60
5.3.4	Impacts on the environment	61
5.3.5	Impacts on public authorities and courts	61
5.3.6	Other impacts	61
6	Commentary to the proposed legislation	62
6.1	The proposal regarding an act to amend the Act (1994:1563) on Tobacco Excise Duty	62
6.2	The proposal regarding an act to amend the Act (1994:1551) on Freedom from Taxation Upon Import, etc.	67
6.3	The proposal regarding an act to amend the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties	69
6.4	The proposal regarding an act to amend the Act (1999:445) on Export Shops	71
6.5	The proposal regarding an act to amend the Act (2001:181) on Data Processing in the Swedish Tax Agency's Tax Operations	71
6.6	The proposal regarding an act to amend the Tax Procedures Act (2011:1244)	72

1 Legal wording

Proposed legal wording.

1.1 Proposal regarding an act to amend the Act (1994:1563) on Tobacco Excise Duty

It is hereby prescribed with regard to the Act (1994:1563) on Tobacco Excise Duty:

first that Sections 1, 2, 8, 21, 35–38, 39–40(a) and 42 and the headings immediately before Section 35 shall be worded as follows,

and second that seven new sections, Sections 33, 35(a), 38(b–e) and 39(a), shall be introduced into the Act and be worded as follows:

Current wording

Tobacco excise duty shall be paid to the state in accordance with this Act.

Excise duty shall be paid for cigarettes, cigars, cigarillos and smoking tobacco. Sections 1(a)–34 apply to the excise duty.

Excise duty shall also be paid for snus and chewing tobacco as referred to under heading no. 2403 of the Combined Nomenclature pursuant to Council Regulation (EEC) no. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff. Sections 35–40(a) apply to the excise duty on snus *and* chewing tobacco.

The term “import” means a tobacco product imported into Sweden from *a third country*, on the condition that the product is not subject to such customs suspensive procedure or arrangement as referred to in Article 4(6) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC. The term “import” also means that the product is released

Proposed wording

Section 1¹

Excise duty shall also be paid for snus and chewing tobacco as referred to under heading no. 2403 of the Combined Nomenclature pursuant to Council Regulation (EEC) no. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff *as well as for other forms of tobacco*. Sections 35–40(a) apply to the excise duty on snus, chewing tobacco *and other forms of tobacco*.

For the purposes of this Act, tobacco product refers to cigarettes, cigars, cigarillos and smoking tobacco as well as snus, chewing tobacco and other forms of tobacco.

The term “import” means a tobacco product imported into Sweden from a third country, on the condition that the product is not subject to such customs suspensive procedure or arrangement as referred to in Article 4(6) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC. The term “import” also means that the product is released

¹ Most recent wording 2011:285.

Unofficial translation

is released from such a procedure or arrangement. The term “export” means a tobacco product exported to *a third country* from Sweden or via another EU member state.

The term “EU” or an “EU member state” means those areas belonging to the European Union’s excise duty territory. The term “third country” means countries and territories outside this excise duty territory.

is released from such a procedure or arrangement. The term “export” means a tobacco product exported to *a third country* from Sweden or via another EU member state. *The term “EU” or an “EU member state” means those areas belonging to the European Union’s excise duty territory. The term “third country” means countries and territories outside this excise duty territory.*

Section 2²

Excise duty on cigarettes shall be charged at SEK 1 and 51 öre per cigarette and 1 per cent of the retail price. The manufacturer or his representative or, in the case of cigarettes imported from *third countries*, the importer, shall submit to the Swedish Tax Agency by no later than 31 January of each year data about the sale of cigarettes in the various price categories for the previous calendar year. By no later than 15 February of the same year as the data are received by the Swedish Tax Agency, the Agency shall submit the data to the Cabinet Office (Ministry of Finance).

Cigarettes with a length, excluding filter or mouthpiece, exceeding 8 centimetres but not 11 centimetres are considered as two cigarettes. For longer cigarettes, each started additional length of 3 centimetres is considered to be one cigarette.

For the calendar year 2016 and following calendar years, the unit excise duties listed in the first paragraph shall be recalculated in accordance with Section 42.

Excise duty on cigarettes shall be charged at SEK 1 and 60 öre per cigarette and 1 per cent of the retail price. The manufacturer or his representative or, in the case of cigarettes imported from *third countries*, the importer shall submit to the Swedish Tax Agency by no later than 31 January of each year data about the sale of cigarettes in the various price categories for the previous calendar year. By no later than 15 February of the same year as the data are received by the Swedish Tax Agency, the Agency shall submit the data to the Cabinet Office (Ministry of Finance).

For the calendar year 2022 and following calendar years, the unit excise duties listed in the first paragraph shall be recalculated in accordance with Section 42.

² Most recent wording 2014:1494.

Unofficial translation

Section 8³

Excise duty on cigars and cigarillos shall be charged at 1 SEK and 33 öre per cigar or cigarillo. Excise duty on smoking tobacco shall be charged at SEK 1,841 per kilogram. For the calendar year 2016 and following calendar years, the excise duty amounts listed in the first paragraph shall be recalculated in accordance with Section 42.

Excise duty on cigars and cigarillos shall be charged at 1 SEK and 41 öre per cigar or cigarillo. Excise duty on smoking tobacco shall be charged at SEK 1,957 per kilogram. For the calendar year 2022 and following calendar years, the excise duty amounts listed in the first paragraph shall be recalculated in accordance with Section 42.

Section 21⁴

Goods which:

1. have been recycled during manufacture; or
2. have been used exclusively for testing the quality of the goods in the tax warehouse, are excluded from a warehouse keeper's liability to pay excise duty under Section 20, first paragraph (1).

1. have been recycled during manufacture of excisable tobacco products; or

Section 33⁵

If a warehouse keeper as referred to in Section 10 during the manufacture of cigarettes, cigars, cigarillos or smoking tobacco has recycled snus, chewing tobacco or other forms of tobacco for which an excise duty liability has become chargeable, the warehouse keeper may make a deduction for excise duty by an amount equal to the excise duty on the snus, chewing tobacco or the other forms of tobacco.

Excise duty liability etc. of snus and chewing tobacco

Excise duty liability etc. of snus, chewing tobacco and other forms of tobacco

Section 35⁶

Excise duty on snus shall be charged at SEK 432 per kilogram and excise duty on chewing tobacco at SEK 476 per kilogram. For the calendar year 2016 and following calendar years, the excise duty amounts listed in the first paragraph shall be recalculated in accordance with Section 42.

Excise duty on snus shall be charged at SEK 459 per kilogram and excise duty on chewing tobacco at SEK 506 per kilogram. For the calendar year 2022 and following calendar years, the excise duty amounts listed in the first paragraph shall be recalculated in accordance with Section 42.

³ Most recent wording 2014:1494.

⁴ Most recent wording 2013:1071.

⁵ Section 33 was previously repealed by 2011:99.

⁶ Most recent wording 2014:1494.

Unofficial translation

Section 35(a)

Excise duty on other forms of tobacco shall be charged at SEK 1,957 per kilogram.

The term “other forms of tobacco” means tobacco which is not part of a living plant and which is not excisable as cigarettes, cigars, cigarillos, smoking tobacco, snus or chewing tobacco. If such tobacco is included in a product, the taxation is based on the total weight of the product.

For the calendar year 2022 and following calendar years, the excise duty amounts listed in the first paragraph shall be recalculated in accordance with Section 42.

Section 36⁷

The person liable to pay excise duty is the person who:

1. has been approved as stock keeper pursuant to Section 38;
2. other than as referred to in point (1), commercially manufactures snus *or* chewing tobacco;
3. other than as referred to in point (1), commercially imports or receives snus *or* chewing tobacco from another EU member state; *or*
4. uses snus *or* chewing tobacco that has been acquired duty-free for another purpose than that which was the basis for the duty exemption.
2. other than as referred to in point (1), commercially manufactures snus, chewing tobacco *or other forms of tobacco*;
3. other than as referred to in point (1) *or point (5)*, commercially imports or receives snus, chewing tobacco *or other forms of tobacco* from another EU member state;
4. uses snus, chewing tobacco *or other forms of tobacco* that has been acquired duty-free for another purpose than that which was the basis for the duty exemption;
5. *sells snus, chewing tobacco or other forms of tobacco to Sweden through distance selling in accordance with Sections 38(b) or 38(c)*;
6. *receives snus, chewing tobacco or other forms of tobacco in accordance with Section 38(d)*; *or*
7. *in cases other than those referred to in points 1–6, is in commercial possession of snus, chewing tobacco or other forms of tobacco without the excise duty on the goods having been declared here.*

⁷ Most recent wording 2011:285.

Unofficial translation

Section 37⁸

The person liable to pay excise duty for the import of snus *or* chewing tobacco from a third country is:

1. if a customs debt is incurred in Sweden as a result of the import: the person liable to pay the customs duty;
2. if the import relates to a Union product or if the goods are to be declared for release for free circulation in Sweden but are not subject to customs duties: the person who would have been liable to pay the custom duty if the goods had been subject to customs duty.

The terms “customs debt” and “Union goods” mean the same as in Article 5 of Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

Goods which, upon their release for free circulation pursuant to Article 201 of Regulation (EU) No. 952/2013, are owned by an approved stock keeper pursuant to Section 38, are exempt from the excise duty liability under the first paragraph.

The person liable to pay excise duty for the import of snus, chewing tobacco *or other forms of tobacco* from a third country is:

Section 38⁹

The term “stock keeper” means persons who are approved *and intend to*:

1. commercially manufacture snus *or* chewing tobacco;
2. commercially import or receive snus *or* chewing tobacco from another EU member state;
3. import snus *or* chewing tobacco from a *third country*; or
4. sell snus *or* chewing tobacco in export shops pursuant to the Act (1999:445) on Export Shops, *provided*, with regard to their financial situation and circumstances in general, they are suitable to act as stock keeper.

The term “stock keeper” means persons who are approved and:

1. *intend to* commercially:
 - a) manufacture snus, chewing tobacco *or other forms of tobacco*;
 - b) import or receive snus, chewing tobacco *or other forms of tobacco* from another EU member state;
 - c) import snus, chewing tobacco *or other forms of tobacco* from a *third country*; or
 - d) sell snus, chewing tobacco *or other forms of tobacco* in export shops pursuant to the Act (1999:445) on Export Shops; and
2. with regard to their financial situation and circumstances in general, are suitable to act as stock keeper.

Approval for stock keepers shall be revoked if the conditions for approval no longer exist or if the stock keeper requests such action to be taken. A decision regarding revocation of approval shall apply with immediate effect, unless otherwise specified in the decision.

Section 38(b)

If a person who is not engaged in an independent economic activity acquires snus, chewing tobacco or other forms of tobacco

⁸ Most recent wording 2016:264.

⁹ Most recent wording 2011:285.

Unofficial translation

which are transported here from another EU member state by the seller or by someone else on behalf of the seller (distance selling of snus, chewing tobacco or other forms of tobacco), the seller is liable to pay excise duty.

The person who sells snus in accordance with the first paragraph or who sells chewing tobacco or other forms of tobacco in accordance with the first paragraph and is not approved as a registered distance seller of chewing tobacco or other forms of tobacco in accordance with Section 38(c) shall notify the Swedish Tax Agency and pledge security for the excise duty on the goods before the goods are consigned from the other EU member state. Pledged security may be claimed if the excise duty is not paid in time.

Section 38(c)

A seller engaged in or intending to engage in distance selling of chewing tobacco or other forms of tobacco on more than one occasion may be approved as a registered distance seller of chewing tobacco or other forms of tobacco if, on the basis of his or her financial circumstances and the circumstances in general, he or she is suitable to act as registered distance seller.

A registered distance seller of chewing tobacco or other forms of tobacco must pledge security for payment of the excise duty on the tobacco dispatched from the other EU member state. The security shall amount to a sum equivalent to ten percent of the estimated annual excise duty on the goods. The security may be claimed if the excise duty is not paid in due time.

Approval as registered distance seller of chewing tobacco or other forms of tobacco shall be revoked if the conditions for approval no longer exist or if the registered distance seller so requests. A decision to revoke shall apply with immediate effect, unless otherwise specified in the decision.

Unofficial translation

If a registered distance seller of chewing tobacco or other forms of tobacco is declared bankrupt, the approval transfers to the bankruptcy estate. The bankruptcy estate is liable to pay excise duty on goods for which the duty under Section 39(5) becomes chargeable after the bankruptcy decision.

Section 38(d)

Persons who receive snus, chewing tobacco or other forms of tobacco consigned to Sweden under Section 38(b) or from a registered distance seller of chewing tobacco or other forms of tobacco under Section 38(c) shall be liable to pay excise duty instead of the seller, if the seller has not pledged security for the excise duty in Sweden.

Section 38(e)

Persons who are not approved as a stock keeper and who commercially import or receive snus, chewing tobacco or other forms of tobacco other than by distance selling shall, before moving the tobacco from the other EU member state, notify such tobacco to the Swedish Tax Agency and pledge security for payment of the excise duty on the tobacco. The pledged security may be claimed if the excise duty is not paid in due time.

Section 39¹⁰

Excise duty becomes chargeable for:

1. approved stock keepers when:

a) snus *or* chewing tobacco are delivered to a buyer who is not an approved stock keeper;

b) snus *or* chewing tobacco are used for purposes other than sale;

c) the approval as a stock keeper is revoked, whereby the liability to pay excise duty includes snus *or* chewing tobacco which are then in *his* stock;

a) snus, chewing tobacco *or other forms of tobacco* are delivered to a buyer who is not an approved stock keeper;

b) snus, chewing tobacco *or other forms of tobacco* are used for purposes other than sale;

c) the approval as a stock keeper is revoked, whereby the liability to pay excise duty includes snus, chewing tobacco *or other forms of tobacco* which are then in *his* stock;

¹⁰ Most recent wording 2016:264.

Unofficial translation

2. the person who is liable to pay excise duty under Section 36(2), when snus *or* chewing tobacco is manufactured;
 3. the person who is liable to pay excise duty under Section 36(3), when snus *or* chewing tobacco are imported into Sweden;
 4. the person who is liable to pay excise duty under Section 36(4), when snus *or* chewing tobacco are used for a purpose other than that intended;
 5. the person who is liable to pay customs duty under Section 37, when the obligation to pay customs duty under customs legislation becomes chargeable or would have become chargeable if an obligation to pay customs duty existed.
2. the person who is liable to pay excise duty under Section 36(2), when snus, chewing tobacco *or other forms of tobacco* are manufactured;
 3. the person who is liable to pay excise duty under Section 36(3), when snus, chewing tobacco *or other forms of tobacco* are imported into Sweden;
 4. the person who is liable to pay excise duty under Section 36(4), when snus, chewing tobacco *or other forms of tobacco* are used for a purpose other than that intended;
 5. *sellers or recipients in event of distance selling of snus, chewing tobacco or other forms of tobacco who are liable to pay excise duty under Sections 36(5) or (6), respectively, when the snus, chewing tobacco or other forms of tobacco are imported into Sweden;*
 6. *the person who is liable to pay excise duty under Section 36(7), when the goods come to be held by him or her;*
 7. the person who is liable to pay customs duty under Section 37, when the obligation to pay customs duty under customs legislation becomes chargeable or would have become chargeable if an obligation to pay customs duty existed.
- Section 39(a)*
Snus, chewing tobacco or other forms of tobacco are exempt from the excise duty liability for stock keepers under Section 39(1)(b) if the snus, chewing tobacco or other forms of tobacco in question:
1. *has been completely destroyed under the supervision of the Swedish Tax Agency;* or
 2. *has been recycled during manufacture of excisable tobacco products.*

Section 40¹¹

The Swedish Customs Authority determines tobacco customs duty for persons who are liable under Section 37 for customs duty in connection with import. The customs duty shall be paid to the Swedish Customs Authority.

The provisions of Section 30, Sections 31(d) and 31(e), Section 32, first paragraph (2 and 3), Section 32, second paragraph, and Section 34 shall also apply with regard to snus and chewing tobacco. *In that connection, what applies to warehouse keepers shall instead apply to persons who are approved stock keepers.*

The provisions of Section 30, Section 31, Sections 31(d) and 31(e), Section 32, first paragraph (2 and 3), Section 32, second paragraph, and Section 34 shall also apply with regard to snus, chewing tobacco *and other forms of tobacco*. *What is said regarding warehouse keepers shall instead apply to persons who are approved stock keepers.*

¹¹ Most recent wording 2016:264.

Unofficial translation

An approved stock keeper may make a deduction for excise duty on:

1. chewing tobacco supplied to a buyer in another EU member state; and
 2. chewing tobacco *and* snus
1. chewing tobacco *and other forms of tobacco* supplied to a buyer in another EU member state; and
 2. chewing tobacco, snus *and other forms of tobacco*
- a) for which excise duty under this Act has previously become chargeable and which have been acquired from a person who is not an approved stock keeper;
 - b) for which excise duty under this Act has previously become chargeable and which are held by the stock keeper at the time of approval;
 - c) which have been destroyed by unforeseen events or force majeure;
 - d) which have been exported to a third country or imported into a free zone for any purpose other than to be consumed there; or
 - e) which have been supplied to such a purchaser as referred to in Chapter 3, Section 30(c), first paragraph, of the VAT Act (1994:200), to the extent to which freedom from tobacco excise duty is applicable in the EU member state.

If an approved stock keeper during the manufacture of snus, chewing tobacco or other forms of tobacco has recycled cigarettes, cigars, cigarillos or smoking tobacco for which an excise duty liability has become chargeable, the stock keeper may make a deduction for excise duty by an amount equal to the excise duty on the cigarettes, cigars, cigarillos or smoking tobacco.

Section 40(a)¹²

The person who pays excise duty in Sweden for chewing tobacco which is then delivered to a buyer in another EU member state, shall, upon application, be granted an excise duty refund, unless otherwise follows from the second paragraph. The person requesting a refund must demonstrate that the excise duty referred to in the application has been paid in Sweden and that the goods have been transferred out of the country.

The application for a refund pursuant to the first paragraph shall be made in writing to the taxing authority. The application shall cover a period of one calendar quarter and be submitted to the taxing authority within three years after the end of the quarter in question. An amount of excise duty that is below SEK 1,500 for the calendar quarter will not be refunded.

An application for a refund must be signed by the applicant or by the applicant's agent or other authorized representative of the applicant.

An application submitted for an applicant who is a legal person shall be deemed to have been submitted by the applicant, unless it is clear that the person submitting the request was not authorised to represent the applicant.

The person who pays excise duty in Sweden for chewing tobacco *or other forms of tobacco* which is then delivered to a buyer in another EU member state, shall, upon application, be granted an excise duty refund, unless otherwise follows from the second paragraph. The person requesting a refund must demonstrate that the excise duty referred to in the application has been paid in Sweden and that the goods have been transported out of the country.

¹² Most recent wording 2017:1206.

Unofficial translation

Section 42¹³

For the calendar year *2016* and following calendar years, the excise duty for the tobacco products specified in Sections 2, 8 and 35 shall be charged at an amount which, after an annual recalculation, corresponds to the amounts of excise duty specified in the Sections, multiplied by the comparative figure, expressed as a percentage, that specifies the relationship between the general price situation in the month of June in the year preceding the year in question and the price situation in June *2014*. With regard to excise duty on cigarettes under Section 2, the recalculation shall only concern the unit excise duty. The amount shall be rounded to a full krona and öre.

Before the end of November, the Government will determine the recalculated amounts of excise duty to be charged under this paragraph for the following calendar year.

For the calendar year *2022* and following calendar years, the excise duty for the tobacco products specified in Sections 2, 8, 35 and 35(a) shall be charged at an amount which, after an annual recalculation, corresponds to the amounts of excise duty specified in the Sections, multiplied by the comparative figure, expressed as a percentage, that specifies the relationship between the general price situation in the month of June in the year preceding the year in question and the price situation in June *2020*. With regard to excise duty on cigarettes under Section 2, the recalculation shall only concern the unit excise duty. The amount shall be rounded to a full krona and öre.

1. This Act enters into force on 01 June 2021 in respect of Sections 38 and 38(c) and otherwise on 01 July 2021.

2. The provisions of the new Section 38(e) apply for the first time to movements of snus, chewing tobacco and other forms of tobacco which start after the date of entry into force.

¹³ Most recent wording 2014:1494.

Unofficial translation

1.2 Proposal regarding an act to amend the Act (1994:1551) on Freedom from Taxation upon Import, etc.

It is hereby prescribed with regard to the Act (1994:1551) on Freedom from Taxation upon Import, etc.:

first, that Chapter 3 Sections 4 and 7 and Chapter 4 Section 3 shall be worded as follows;

and second that two new sections, Chapter 3 Sections 2 and 3 shall be introduced into the Act and be worded as follows:

Current wording

Proposed wording

Chapter 3

Section 2¹

For the purposes of this Act the following definitions apply:

spirits: alcoholic beverages with an alcohol content greater than 22 volume percent;

fortified wine: alcoholic beverages with an alcohol content greater than 15 but not 22 volume percent, as well as sparkling wine;

wine: wines other than fortified wines as well as other alcoholic beverages with an alcohol content exceeding 3.5 but not 15 volume percent and which are not strong beer;

strong beer: beers with an alcohol content greater than 3.5 volume percent.

tobacco products: cigarettes, cigars, cigarillos and smoking tobacco as well as snus, chewing tobacco and other forms of tobacco within the meaning of these terms in the Act (1994:1563) on Tobacco Excise Duty;

e-liquids: e-liquids under the Act (2018:696) on Taxation of Certain Nicotine-containing Products;

other nicotine-containing products: other nicotine-containing products under the Act on Taxation of Certain Nicotine-containing Products.

¹ Section 2 was previously repealed by 2008:1413.

Unofficial translation

Section 3²

Provisions preventing anyone under 20 years of age from bringing spirits, wine and strong beer into the country are set out in Chapter 4 Section 4 of the Alcohol Act (2010:1622). A provision prohibiting anyone under 18 years of age from bringing tobacco products, electronic cigarettes and refill containers under the Act (2018:2088) on Tobacco and Related Products into the country is set out in Chapter 5 Section 20 of the Act.

Section 4³

Freedom from taxation shall, subject to the conditions listed in Section 1 and with the limitations specified in Sections 7 and 8, be granted to a traveller for the import of:

1. 200 cigarettes or 100 cigarillos or 50 cigars or 250 grams of smoking tobacco or a proportionate mix of these tobacco products;
2. one litre of spirits or two litres of fortified wine;
3. four litres of wine; and
4. sixteen litres of strong beer.

Provisions preventing anyone under 20 years of age from bringing spirits, wine and strong beer into the country are set out in Chapter 4 Section 4 of the Alcohol Act (2010:1622). A provision prohibiting anyone under 18 years of age from bringing tobacco products, electronic cigarettes and refill containers into the country is set out in Chapter 5 Section 20 of the Act (2018:2088) on Tobacco and Related Products.

For the purposes of this Act the following definitions apply:

spirits: alcoholic beverages with an alcohol content greater than 22 volume percent;

fortified wine: alcoholic beverages with an alcohol content greater than 15 but not 22 volume percent, as well as sparkling wine;

wine: wines other than fortified wines as well as other alcoholic beverages with an alcohol content exceeding 3.5 but not 15 volume percent and which are not strong beer;

² Section 3 was previously repealed by 2008:1413.

³ Most recent wording 2018:2089.

Unofficial translation

strong beer: beers with an alcohol content greater than 3.5 volume percent;
e-liquids: e-liquids under the Act (2018:696) on Taxation of Certain Nicotine-containing Products;
other nicotine-containing products: other nicotine-containing products under the Act on Taxation of Certain Nicotine-containing Products.

Section 7⁴

Freedom from excise duty pursuant to this Chapter shall only be granted to a crew member on a ship or an aircraft arriving from a third country for the crew member's personal luggage, when the luggage is temporarily brought in or reintroduced after a temporary exit, as well as for 100 cigarettes or 20 cigars or 20 cigarillos or 100 grams of smoking tobacco or a proportionate mix of these tobacco products, if the luggage and goods are brought in when the crew member travels in connection with his or her work.

A provision prohibiting anyone under 18 years of age from bringing tobacco products into the country is set out in Chapter 5 Section 20 of the Act (2018:2088) on Tobacco and Related Products.

The restriction on the right to freedom from excise duty under the first paragraph does not apply if the crew member:

1. brings in the goods in connection with ending his or her employment with the shipping company or airline or other entity operating a business on board; or
2. interrupts his or her service on board for a holiday or other leave and the leave is intended to last for at least 15 days; or
3. is resident in Sweden and has been abroad for at least 15 days.

The restriction of the right to freedom from excise duty under the first paragraph only applies to staff performing work associated with the mode of transport's passage or with service on-board. Service on-board the mode of transport also includes, besides the usual services such as serving, waiting and cleaning, such services as are provided by hairdressers, shop workers, professional entertainers and other comparable employee groups.

⁴ Most recent wording 2018:2089.

Unofficial translation

Current wording

Chapter 4

Section 3⁵

Customs and excise duty under Section 1 shall be charged at the following amounts:

	Customs duty	Excise duty
spirits	SEK 4/litre	SEK 262/litre
fortified wine	SEK 2/litre	SEK 81/litre
wine	SEK 1/litre	SEK 36/litre
strong beer	SEK 3/litre	SEK 20/litre
cigarettes	34 öre/cigarette	196 öre/cigarette
cigars	86 öre/cigar	219 öre/cigar
smoking tobacco	SEK 428/kg	SEK 2,422/kg
snus	SEK 104/kg	SEK 762/kg
e-liquids	SEK 320/litre	SEK 3,300/litre
other nicotine-containing products	SEK 390/kg	SEK 1,225/kg

Proposed wording

Chapter 4

Section 3

Customs and excise duty under Section 1 shall be charged at the following amounts:

	Customs duty	Excise duty
spirits	SEK 4/litre	SEK 262/litre
fortified wine	SEK 2/litre	SEK 81/litre
wine	SEK 1/litre	SEK 36/litre
strong beer	SEK 3/litre	SEK 20/litre
cigarettes	34 öre/cigarette	196 öre/cigarette
cigars	86 öre/cigar	219 öre/cigar
smoking tobacco	SEK 428/kg	SEK 2,422/kg
<i>other forms of tobacco</i>	<i>SEK 428/kg</i>	<i>SEK 2,422/kg</i>
snus	SEK 104/kg	SEK 762/kg
e-liquids	SEK 320/litre	SEK 3,300/litre
other nicotine-containing products	SEK 390/kg	SEK 1,225/kg

-
1. This Act enters into force on 01 July 2021.
 2. Earlier provisions still apply as regards conditions relating to the time prior to entry into force.

⁵ Most recent wording 2018:697.

1.3 Proposal regarding an act to amend the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties

It is hereby prescribed that Chapter 1 Sections 1, 2 and 4, Chapter 2 Sections 13(a) and 16, Chapter 3 Section 5(a) and Chapter 4 Section 1 of the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties shall be worded as follows.

Current wording

Proposed wording

Chapter 1

Section 1¹

This Act contains provisions on the movement of excisable goods and on checks regarding excisable goods during road transport and consignment by post. This Act also contains provisions regarding checks of warehouse keepers within a duty suspension arrangement.

The provisions are based on Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC¹⁶.

The provisions are based, *firstly*, on Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC *and, secondly, on the Act (1994:1563) on Tobacco Excise Duty.*

Section 2²

“Excise goods” means tobacco product, alcohol product and energy product.

“Tobacco product” is a product defined in Section 1, second paragraph, of the Act (1994:1563) on Tobacco Excise Duty.

“Tobacco product” is a product defined in Section 1, fourth paragraph, of the Act (1994:1563) on Tobacco Excise Duty.

“Alcohol product” is a product defined in Sections 2-6 of the Act (1994:1564) on Alcohol Excise Duty.

“Energy product” means fuel as defined in Chapter 1 Section 3(a) of the Act (1994:1776) on Taxation of Energy.

Section 4³

The “Person who is liable to pay excise duty” means the person who is liable to pay excise duty under:

1. Section 9, first paragraph 1–6, Section 27 or Section 28 of the Act (1994:1563) on Tobacco Excise Duty;

1. Section 9, first paragraph 1–6, Section 27, Section 28 or Section 36(3, 5 or 6) of the Act (1994:1563) on Tobacco Excise Duty;

2. Section 8, first paragraph 1–6, Section 26 or Section 27 of the Act (1994:1564) on Alcohol Excise Duty; and

3. Chapter 4 Section 1, first paragraph 1–6 or 8, Section 2 or Section 2(a) of the Act (1994:1776) on Taxation of Energy.

¹ Most recent wording 2013:1077.

² Most recent wording 2006:1510.

³ Most recent wording 2009:1507.

Unofficial translation

Chapter 2

Section 13(a)⁴

The tax on the product shall be waived if the Swedish Customs Authority has decided that tax is payable on:

1. such a taxed alcohol product as referred to in Section 7(a) of the Act (1994:1564) on Alcohol Excise Duty and the person who can be expected to make a claim on the product, if the preventive detention of the product was to terminate in accordance with Section 15, does not have a right to import the product under Chapter 4 Section 4 or Chapter 6 Section 1 of the Alcohol Act (2010:1622);
 2. such a taxed tobacco product as referred to in Section 8(a) of the Act (1994:1563) on Tobacco Excise Duty and the person who can be expected to make a claim on the product, if the preventive detention of the product was to terminate under Section 15, *is under 18 years of age*; or
 3. such a taxed tobacco product as referred to in Section 8(a) of the Act on Tobacco Excise Duty and it is likely that the product is intended to be offered for sale in Sweden, and such sale would be manifestly contrary to Chapter 3 Section 1, third paragraph, of the Act (2018:2088) on Tobacco or Related Products or Section 4 of the Act on Tobacco Excise Duty.
2. *snus, chewing tobacco, other forms of tobacco* or such a taxed tobacco product as referred to in Section 8(a) of the Act (1994:1563) on Tobacco Excise Duty and the person who can be expected to make a claim on the product, if the preventive detention of the product was to terminate under Section 15, *does not have a right to import the product under Chapter 5 Section 20 of the Act (2018:2088) on Tobacco or Related Products*; or
 3. *snus, chewing tobacco, other forms of tobacco* or such a taxed tobacco product as referred to in Section 8(a) of the Act on Tobacco Excise Duty and it is likely that the product is intended to be offered for sale in Sweden, and such sale would be manifestly contrary to Chapter 3 Section 1, third paragraph, of the Act (2018:2088) on Tobacco or Related Products or Section 4 of the Act on Tobacco Excise Duty.

Section 16⁵

If the preventive detention of the product was to terminate but the person who makes a claim on the product does not have a right to import the product under Chapter 4 Section 4 or Chapter 6 Section 1 of the Alcohol Act (2010:1622), a decision shall be made that the product shall not be released.

If the preventive detention of the product was to terminate but the person who makes a claim on the product *is under 18 years of age*, a decision shall be made that the product shall not be released.

If the preventive detention of the product was to terminate but the person who makes a claim on the product *does not have a right to import the product under Chapter 5 Section 20 of the Act (2018:2088) on Tobacco or Related Products*, a decision shall be made that the product shall not be released.

⁴ Most recent wording 2018:2091.

⁵ Most recent wording 2013:1076.

Unofficial translation

Chapter 3

Section 5(a)⁶

If there is insufficient information to determine excise duty under Section 5, first paragraph, excise duty can be charged at:

SEK 202/litre for spirits;

SEK 54/litre for fortified wine;

SEK 27/litre for wine;

SEK 10/litre for strong beer;

106 öre/cigarette for cigarettes,

68 öre/cigarillo or cigar for cigarillos and cigars, and

SEK 752/kg for smoking tobacco.

For the purposes of this provision the following definitions apply:

spirits: alcoholic beverages with an alcohol content greater than 22 volume percent;

fortified wine: alcoholic beverages with an alcohol content exceeding 15 but not 22 volume percent;

wine: wines other than fortified wines as well as other alcoholic beverages with an alcohol content exceeding 3.5 but not 15 volume percent and which are not strong beer;

strong beer: beer with an alcohol content greater than 3.5 volume percent; and

cigarillo: cigars with a maximum weight of 3 grams per cigar.

If there is insufficient information to determine excise duty under Section 5, first paragraph, excise duty can be charged at:

SEK 207/litre for spirits;

SEK 55/litre for fortified wine;

SEK 27/litre for wine;

SEK 11/litre for strong beer;

SEK 1 and 63 öre/cigarette for cigarettes,

strong beer: beer with an alcohol content greater than 3.5 volume percent.

Chapter 4

Section 1⁷

A special charge (*transport surcharge*) shall be imposed on a consignor warehouse keeper or registered consignor if:

1. an administrative reference code or replacement document does not accompany the consignment to the extent that follows from Chapter 1 Section 6; or
2. security is not pledged for the consignment to the extent that follows from Chapter 1 Section 6.

A transport surcharge shall be imposed on:

1. the person who is liable to pay excise duty if the notification obligation or the obligation to pledge security that follow from Sections 17 of the Act (1994:1563) on Tobacco Excise Duty, Section 16 of the Act (1994:1564) on Alcohol Excise Duty or Chapter 4 Section 11 of the Act (1994:1776) on Taxation of Energy have not been complied with; or

1. the person who is liable to pay excise duty if the notification obligation or the obligation to pledge security that follow from Sections 17 or 38(e) of the Act (1994:1563) on Tobacco Excise Duty, Section 16 of the Act (1994:1564) on Alcohol Excise Duty or Chapter 4 Section 11 of the Act (1994:1776) on Taxation of Energy have not been complied with; or

⁶ Most recent wording 2016:1074.

⁷ Most recent wording 2018:1888.

Unofficial translation

2. the seller who, for distance selling under Sections 16 or 16(b) of the Act on Tobacco Excise Duty, Sections 15 or 15(b) of the Act on Alcohol Excise Duty or Chapter 4 Sections 9 or 9(b) of the Act on Taxation of Energy, has not pledged security in the manner prescribed.

2. the seller who, for distance selling under Sections 16 or 16(b) of the Act on Tobacco Excise Duty, Sections 15 or 15(b) of the Act on Alcohol Excise Duty or Chapter 4 Sections 9 or 9(b) of the Act on Taxation of Energy, *or for distance selling of snus, chewing tobacco or other forms of tobacco under Sections 38(b) or 38(c) of the Act on Tobacco Excise Duty*, has not pledged security in the manner prescribed.

A transport surcharge shall be imposed on a driver or a passenger transporting goods in accordance with Chapter 2 Section 6, second paragraph, who does not possess the prescribed simplified accompanying documents when moving excise goods that are taxed in another EU member state. If there is ground for imposing a transport surcharge on both a driver and a passenger for the same goods, the transport surcharge shall only be imposed on the passenger.

The transport surcharge shall be imposed on the owner or, if such a premises is leased to another person, the person who possesses the right of use to the premises where excise goods are stored for loading, unloading or trans-shipment during an ongoing movement, if the prescribed simplified accompanying documents when moving excise goods that are taxed in another EU member state are not provided during a transport inspection.

The transport surcharge is forty percent of the excise duties which were payable or may be assumed to have been payable on the goods for which the provisions of the first, second, third or fourth paragraph have not been complied with.

-
1. This Act enters into force on 01 July 2021.
 2. The Act applies for the first time to movements of snus, chewing tobacco and other forms of tobacco which start after the date of entry into force.

1.4 Proposal regarding an act to amend the Act (1999:445) on Export Shops

It is hereby prescribed that Sections 4 and 5 of the Act (1999:445) on Export Shops shall be worded as follows.

Current wording

In an export shop, untaxed Union goods can be sold to air passengers travelling to a location outside the EU's tax territory.

The sale of goods under the first paragraph only relates to the goods specified in this provision and, in specific cases, to the following quantities for each individual traveller:

1. 200 cigarettes or 100 cigarillos or 50 cigars or 250 grams of smoking tobacco or a proportionate mix of these tobacco products;
2. one litre of spirits or two litres of fortified wine, two litres of wine, two litres of strong beer, and
3. perfume, toilet waters and other cosmetic preparations, chocolate and confectionery products, nicotine products and other tobacco products than those listed above.

To those departing to a destination in Norway, sales may not exceed the quantities that travellers may import duty free into that country.

When applying the second paragraph, the following definitions apply:

spirits: alcoholic beverages with an alcohol content greater than 22 volume percent;

fortified wine: alcoholic beverages with an alcohol content greater than 15 but not 22 volume percent, as well as sparkling wine;

wine: wines other than fortified wines as well as other alcoholic beverages with an alcohol content exceeding 3.5 but not 15 volume percent and which are not strong beer;

strong beer: beer with an alcohol content greater than 3.5 volume percent;

cigarillos: cigars with a maximum weight of 3 grams per cigar;

other forms of tobacco: *other forms of tobacco as referred to in Section 35(a) of the Act (1994:1563) on Tobacco Excise Duty*;

nicotine products: e-liquids and other nicotine-containing products under the Act (2018:696) on Taxation of Certain Nicotine-containing Products.

Proposed wording

Section 4¹

¹ Most recent wording 2018:698.

Unofficial translation

Section 5²

If *other tobacco products than snus or chewing tobacco* shall be sold in an export shop, the business in the export shop shall be operated by an approved warehouse keeper pursuant to the Act (1994:1563) on Tobacco Excise Duty. If snus or chewing tobacco shall be sold in an export shop, the business in the export shop shall be operated by an approved stock keeper pursuant to the same act.

If alcoholic goods shall be sold in an export shop, the business in the export shop shall be operated by an approved warehouse keeper pursuant to the Act (1994:1564) on Alcohol Excise Duty.

The export shop must then be an approved tax warehouse under the respective act.

If nicotine products under Section 4, fourth paragraph, shall be sold in an export shop, the business in the export shop shall be operated by an approved stock keeper pursuant to the Act (2018:696) on Taxation of Certain Nicotine-containing Products.

If *cigarettes, cigars, cigarillos or smoking tobacco* shall be sold in an export shop, the business in the export shop shall be operated by an approved warehouse keeper pursuant to the Act (1994:1563) on Tobacco Excise Duty. If snus, chewing tobacco *or other forms of tobacco* shall be sold in an export shop, the business in the export shop shall be operated by an approved stock keeper pursuant to the same act.

-
1. This Act enters into force on 01 July 2021.
 2. Earlier provisions still apply as regards conditions relating to the time prior to entry into force.

² Most recent wording 2018:698.

1.5 Proposal regarding an act to amend the Act (2001:181) on Data Processing in the Swedish Tax Agency's Tax Operations

It is hereby prescribed that Chapter 2 Section 12 of the Act (2001:181) on Data Processing in the Swedish Tax Agency's Tax Operations¹ shall be worded as follows.

Current wording

Proposed wording

Chapter 2
Section 12²

Data and documents relating to:

1. audits shall be deleted ten years after expiry of the calendar year in which the audit was completed, and
2. property taxation shall be deleted twelve years after expiry of the tax year to which the data or documents may relate.

Data and documents about approved warehouse keepers, registered consignees, temporary registered consignees, registered consignors or approved tax warehouses under the Act (1994:1563) on Tobacco Excise Duty, the Act (1994:1564) on Alcohol Excise Duty and the Act (1994:1776) on Taxation of Energy shall be deleted seven years after expiry of the calendar year in which the operator de-registered.

Data and documents about approved stock keepers under the Act on Tobacco Excise Duty, the Act on Taxation of Energy, the Act (2016:1067) on Taxation of Chemicals in Certain Electronics, the Act (2018:696) on Taxation of Certain Nicotine-containing Products and the Act (2020:32) on Taxation of Plastic Carrier Bags and data and documents about registered recipients under the Act on Taxation of Chemicals in Certain Electronics shall be deleted seven years after expiry of the calendar year in which the approval was revoked.

Data and documents about approved stock keepers under the Act on Tobacco Excise Duty, the Act on Taxation of Energy, the Act (2016:1067) on Taxation of Chemicals in Certain Electronics, the Act (2018:696) on Taxation of Certain Nicotine-containing Products and the Act (2020:32) on Taxation of Plastic Carrier Bags and data and documents about registered recipients under the Act on Taxation of Chemicals in Certain Electronics *and registered distance sellers of chewing tobacco and other forms of tobacco under the Act of Tobacco Excise Duty* shall be deleted seven years after expiry of the calendar year in which the approval was revoked.

Data and documents as referred to in Section 4(a) shall be deleted ten years after expiry of the calendar year in which the notification linked to the administrative reference codes under Section 22(b), second paragraph, of the Act on Tobacco Excise Duty, Section 21(b), second paragraph, of the Act on Alcohol Excise Duty or Chapter 6 Section 4, second paragraph, of the Act on Taxation of Energy or other unifying identification data were last amended.

¹ Most recent wording of the Act's title 2003:670.

² Most recent wording 2018:698.

Unofficial translation

This Act enters into force on 01 July 2021.

1.6 Proposal regarding an act to amend the Tax Procedures Act (2011:1244)

It is hereby prescribed that Chapter 7 Section 1, Chapter 37 Sections 7(a) and 9(a) and Chapter 41 Sections 2 and 3 of the Tax Procedures Act (2011:1244) shall be worded as follows.

Wording according to Swedish Code of Statutes *Proposed wording*
SFS 2020:37

Chapter 7 **Section 1¹**

The Swedish Tax Agency shall register:

1. the person who is obliged to deduct tax;
2. the person who is obliged to pay payroll taxes;
3. the person who is excisable under the VAT Act (1994:200), with the exception of the person who is only excisable because of the acquisition of such goods listed in Chapter 2(a) Section 3, first paragraph 1 and 2, of the same act;
4. the person who, without being subject to Chapter 19 Section 1 of the VAT Act, is entitled to repayment of input VAT under Chapter 10, Sections 9, 11 and 11(b)–13 of the same act;
5. the person making such intra-Union acquisition as is exempt from excise duty liability under Chapter 3 Section 30(d), first paragraph, of the VAT Act;
6. a foreign taxable person who is established in another EU member state and entitled to repayment pursuant to Chapter 10 Sections 1–3 of the VAT Act without being subject to Chapter 19 Section 1 of the same act, and who also does not need to be registered pursuant to Sections 3, 4 or 5;
7. a taxable person who is established in Sweden and trading services in another EU member state whose acquisition of the services are taxable in that country in accordance with the application of Article 196 in Council Directive 2006/112/EC of 26 November 2006 on the common system of value added tax;
8. the person who is obliged to reconcile input VAT pursuant to Chapter 8(a) or Chapter 9 Sections 9–13 of the VAT Act;
9. the person who is taxable and accountable under the Act (1972:266) on Taxation of Advertising and Publicity;
10. the person who is taxable under:
 - a) the Act (1984:410) on Taxation of Pesticides;
 - b) the Act (1990:1427) on Special Tax Premiums for Group Life Insurance, etc.;
 - c) Sections 10 or 13 or Section 16, first paragraph, or Section 36(1) of the Act (1994:1563) on Tobacco Excise Duty;
 - d) Sections 9 or 12 or Section 15, first paragraph, of the Act (1994:1564) on Alcohol Excise Duty;
 - e) Chapter 4 Sections 3 or 6 or Section 9, first paragraph, or Section 12(first paragraph 1 or 11) or Chapter 11 Section 5(first paragraph 1, 2 or 3) of the Act (1994:1776) on Taxation of Energy;
 - f) the Act (1995:1667) on Taxation of Fine Aggregates;
 - g) the Act (1999:673) on Waste Excise Duty;
 - h) the Act (2007:460) on Taxation of Traffic Insurance Premiums etc.;

¹ Most recent wording 2020:35.

Unofficial translation

- i) Section 8(1 or 2) of the Act (2016:1067) on Taxation of Chemicals in Certain Electronics;
 - j) the Act (2017:1200) on Taxation of Air Travel;
 - k) Section 6(1 or 2(b)) of the Act (2018:696) on Taxation of Certain Nicotine-containing Products;
 - l) the Act (2018:1139) on Taxation of Gaming;
 - m) the Act (2019:1274) on Taxation of Incinerated Waste; or
 - n) Chapter 4 Section 1 of the Act (2020:32) on Taxation of Plastic Carrier Bags;
 - 11. the person who is obliged to use cash registers in accordance with Chapter 39 Sections 4-6;
 - 12. the person who according to Chapter 39 Section 11(b) is obliged to provide equipment so that an electronic personnel register can be operated at a construction site; and
 - 13. the person making the payment which forms the basis for the state pension contribution under the Act (1998:676) on Contributions to Public Retirement Pension.
- However, if the person to be registered under the first paragraph has a representative pursuant to Chapter 5, the representative shall be registered instead.

Current wording

Proposed wording

Chapter 37

Section 7(a)²

The Swedish Tax Agency may order the person who has been granted a refund of excise duty in those cases referred to in Chapter 53 Section 5(1)(b-d) or a refund of or compensation for excise duty in the cases referred to in Chapter 53 Section 5(2), to submit the information required by the Agency to verify that it has submitted true and complete information in an application for a refund of or compensation for excise duty.

The Swedish Tax Agency may order the person who has been granted a refund of excise duty in those cases referred to in Chapter 53 Section 5(1)(b-e) or a refund of or compensation for excise duty in the cases referred to in Chapter 53 Section 5(2), to submit the information required by the Agency to verify that it has submitted true and complete information in an application for a refund of or compensation for excise duty.

Section 9(a)³

The Swedish Tax Agency may order the person who is or who can be presumed to be accountable under the Accounting Act (1999:1078) or who is a different legal person than an estate of a deceased person, to submit information about a legal transaction with someone else.

The order shall refer to the conditions that are relevant for checking that persons other than the person ordered has submitted true and complete information in an application for a refund of excise duty in those cases referred to in Chapter 53 Section 5(1)(b-d) or a refund of or compensation for excise duty in the cases referred to in Chapter 53 Section 5(2).

The order shall refer to the conditions that are relevant for checking that persons other than the person ordered has submitted true and complete information in an application for a refund of excise duty in those cases referred to in Chapter 53 Section 5(1)(b-e) or a refund of or compensation for excise duty in the cases referred to in Chapter 53 Section 5(2).

² Most recent wording 2018:701.

³ Most recent wording 2018:701.

Unofficial translation

Chapter 41

Section 3⁴

The following persons may be audited:

1. the person who is or who can be presumed to be accountable under the Accounting Act (1999:1078);
2. another legal person than an estate of a deceased person;
3. the person who has applied for registration;
4. the person who has applied for or is approved for F-tax;
5. such agent for a foreign taxable person as referred to in Chapter 6 Section 2;
6. such representative as referred to in Section 16(a) of the Act (1994:1563) on Tobacco Excise Duty, Section 15(a) of the Act (1994:1564) on Alcohol Excise Duty or Chapter 4 Section 9(a) of the Act (1994:1776) on Taxation of Energy;
7. the person who has applied for approval as a warehouse keeper under the Act on Tobacco Excise Duty, the Act on Alcohol Excise Duty or the Act on Taxation of Energy;
8. the person who has applied for registration as a consignee under the Act on Tobacco Excise Duty, the Act on Alcohol Excise Duty or the Act on Taxation of Energy;
9. the person who has applied for approval as a duty-free consumer under the Act on Alcohol Excise Duty or the Act on Taxation of Energy;
10. the person who has applied for approval as a registered consignor under the Act on Tobacco Excise Duty, the Act on Alcohol Excise Duty or the Act on Taxation of Energy;
11. the person who has applied for approval as a stock keeper under the Act on Tobacco Excise Duty, the Act on Taxation of Energy, the Act (2016:1067) on Taxation of Chemicals in Certain Electronics, the Act (2018:696) on Taxation of Certain Nicotine-containing Products or the Act (2020:32) on Taxation of Plastic Carrier Bags, *and*
11. the person who has applied for approval as a stock keeper under the Act on Tobacco Excise Duty, the Act on Taxation of Energy, the Act (2016:1067) on Taxation of Chemicals in Certain Electronics, the Act (2018:696) on Taxation of Certain Nicotine-containing Products or the Act (2020:32) on Taxation of Plastic Carrier Bags,
12. the person who has applied for approval as registered recipient under the Act on Taxation of Chemicals in Certain Electronics.
12. the person who has applied for approval as registered recipient under the Act on Taxation of Chemicals in Certain Electronics, *and*
13. *the person who has applied for approval as registered distance seller of chewing tobacco or other forms of tobacco under the Act on Tobacco Excise Duty.*

⁴ Most recent wording 2020:35.

Unofficial translation

This Act shall enter into force on 01 June 2021 as regards Chapter 7 Section 1 and Chapter 41 Section 3, and otherwise on 01 January 2021.

2 Excisable tobacco

2.1 Background and applicable law

The taxation of cigarettes, cigars, cigarillos and smoking tobacco is harmonized within the EU through Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (“the Tobacco Excise Directive”). The Directive has been implemented in Swedish law through the Act (1994:1563) on Tobacco Excise Duty. In Sweden, in addition to the EU harmonized tobacco products mentioned, snus and chewing tobacco are also taxed on the basis of the provisions of the Act on Tobacco Excise Duty.

Tobacco which is not subject to the Act on Tobacco Excise Duty is not excisable. Such tobacco often consists of untreated raw tobacco, but in some cases may also comprise residues from production of tobacco products (tobacco refuse). This type of tobacco cannot normally be consumed directly but rather needs to be processed, although it can be used in the manufacture of other tobacco products. For example, such tobacco can be used to industrially manufacture snus and cigarettes. This type of tobacco can also be used by individuals to manufacture their own snus and cigarettes.

Based on examples from the Customs Tariff, such tobacco is sometimes referred to as “raw tobacco”. However, this is not a term or concept in tax law. The fact that a particular tobacco product is classified as raw tobacco under the Customs Tariff does not affect the assessment of whether that product is subject to excise duty under the Act on Tobacco Excise Duty. In the following, the term “other forms of tobacco” will be used to describe tobacco that is not currently excisable.

Other forms of tobacco must be distinguished from smoking tobacco. The definition of the term “smoking tobacco” in the Act on Tobacco Excise Duty is based on the Tobacco Excise Directive and covers two different forms of tobacco. The first form infers that the tobacco has in some way been broken apart. In that case, two conditions must be met for a particular tobacco to be considered to fall under the definition. Namely, first, that the tobacco is cut or otherwise split, twisted or pressed into blocks and, secondly, that it is capable of being smoked without further industrial processing. The second form is tobacco refuse, which means remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products. The tobacco refuse must be capable of being smoked, must be put up for retail sale and must not fall under the definitions of cigarettes or cigars and cigarillos, respectively.

Following a request for a preliminary ruling, some of the concepts that define smoking tobacco have been interpreted by the European Court of Justice in its judgement of 06 April 2017 in Case C-638/15, *Eko-Tabak*. In the judgement, the European Court of Justice ruled, *inter alia*, on what constitutes smoking tobacco and what is meant by “tobacco which has been cut or otherwise split” and “industrial processing”. However, the judgement has been interpreted in different ways in different EU member states and there has even been discussion within Swedish law as regards how the judgement should be interpreted.

When it comes to assessing whether a product is capable of being smoked without further industrial processing, to some degree this is sensitive to the test method employed, although a test in itself is not decisive for whether a particular tobacco is considered smokable. Moreover, certain residual products from the manufacture of tobacco products can be seen as smoking tobacco if capable of being smoked and “put up for retail sale”. This term also contains an assessment element.

Unofficial translation

Overall, there are certain difficulties and ambiguities associated with demarcating between excisable smoking tobacco and such tobacco as is not subject to taxation.

In its judgement of 16 December 2019 in case nos. 4028-18 and 4029-18 (“Prillan Concept”), the Supreme Administrative Court reached a decision regarding whether a particular tobacco product should be considered to constitute smoking tobacco. The Supreme Administrative Court referred to the judgement in Eko-Tabak and stated, *inter alia*, that the definition of “smoking tobacco” cannot be construed narrowly and that the definitions of the words “cut” and “split” must be construed widely. Given this, the tobacco product in the form of flakes of tobacco leaves in question in the case would be considered to be smoking tobacco and therefore excisable.

In Sweden, the differences between excisable smoking tobacco and non-excisable tobacco has given rise to some difficulties. Rogue operators import and sell smoking tobacco in Sweden but call it “raw tobacco” in order to avoid paying tax. The tobacco can then be sold at a fraction of the price of smoking tobacco. In some cases, the uncertainties surrounding demarcation mean that protracted processes may be required in order to decide whether or not the tobacco should be taxed. However, these demarcation problems should have been reduced following the aforementioned ruling from the Supreme Administrative Court. However, an assessment as to whether the tobacco is excisable or not still needs to be made. Tobacco is also imported into Sweden for use in legal snus production. The uncertainties surrounding demarcation have, in some cases, meant that tobacco which was previously considered to be raw tobacco is now considered to be excisable smoking tobacco. This entails a risk of double taxation as, under certain circumstances, the raw material for snus production may be taxed and the finished snus then taxed again. At present, in this situation, there is no possibility for a stock keeper to reclaim the tax that has been paid for smoking tobacco if it is used for snus production. The uncertainties should have been reduced following the Supreme Administrative Court’s judgement, but opportunities for stock keepers to reclaim tax on smoking tobacco are still missing. In addition, other forms of tobacco have been lawfully imported into Sweden but then used for commercial manufacture of tobacco products without tax being paid. If a private individual uses other forms of tobacco to manufacture cigarettes for his or her own use, no liability to pay excise duty is incurred. But if the manufacture is a commercial operation, excise duty must be paid on the finished cigarettes. In these cases, it is not the demarcation as such that causes problems, but rather the fact that, for rogue operators, non-excisable tobacco facilitates their attempts try to evade the excise duty liability associated with the manufacture of tobacco products.

There are no rules on taxation of other forms of tobacco or “unprocessed tobacco” at EU level. Member states therefore have the possibility to introduce and formulate regulations on such taxation, provided the regulations do not give rise to formalities connected with cross border trade between member states and comply with the general principles of Union law on proportionality and equal treatment.

2.2 Regulation and taxation of other forms of tobacco in some other EU member states

Some EU member states have, to varying degrees, chosen to regulate the handling of other forms of tobacco and sometimes even chosen to tax it. Several examples are presented below.

In Denmark, there are provisions that only businesses manufacturing excisable goods (i.e. goods regulated by the Excise Duty Directive) are entitled to trade in raw tobacco.

In 2015, Croatia introduced provisions on checks of handling as regards “raw tobacco”. Provisions exist regarding requirements for registration and a special licence for the consignment of raw tobacco. The definition of raw tobacco covers, in principle, harvested tobacco irrespective of the degree of its processing or treatment, provided it is not considered to be a tobacco product. The Polish Excise Duty Act contains a definition that dried tobacco should be understood as such tobacco which, regardless of its moisture content, is not part of a living plant and is not yet a tobacco product.

Slovakia has provisions on the taxation of “raw tobacco”. A person who wants to receive, store and supply raw tobacco in order to produce tobacco products is also obliged to apply for inclusion on the National Register of Tobacco Merchants administered by the Slovakian Customs Authority.

The Czech Republic has had provisions on the taxation of “raw tobacco” since 2015. Among other things, a liability to pay excise duty arises if raw tobacco is handled for another purpose than the manufacture of tobacco products or when raw tobacco is supplied for any other purpose than manufacturing tobacco products or when the origin of the raw tobacco cannot be accounted for. The definition of raw tobacco is based on leaves or parts of the tobacco plant. There are also provisions regarding a licensing requirement in order to be allowed to handle raw tobacco.

Hungary has provisions regarding a licensing requirement for growing tobacco plants as well as importing, producing, storing and placing tobacco products on the market. The export of dried or fermented tobacco is also covered. In the main, the regulations mean that raw tobacco products can only be sold and supplied to persons registered by the authorities. The term raw tobacco is defined as “the leaves of a plant of *Nicotiana tabacum*, which can be prepared industrially and dried by natural or artificial processes”.

3 Taxation of other forms of tobacco

3.1 Handling of other forms of tobacco

<p>The memorandum's assessment: There is no need to introduce any regulations regarding a requirement for a permit or licence for handling tobacco.</p>
--

Reasons for the assessment: As mentioned above, the demarcation between excisable smoking tobacco and tobacco which is not excisable has been unclear. Following clarification of the legal situation in Sweden through the Supreme Administrative Court's ruling, the difficulty in assessing whether a particular type of tobacco should be taxed or not ought to have decreased. However, the

Unofficial translation

problems associated with certain tobaccos being tax-free remain. There are two main ways of solving these problems – a licensing system or taxation or a combination of the two. Some member states have a requirement for some form of permit or licence for handling raw tobacco. The countries that have such systems have often also chosen to tax raw tobacco. These requirements are often associated with requirements for certain reporting obligations to the competent authorities. The Swedish tobacco industry has previously remarked that a similar system should also be introduced here (see Government Bill 2017/18:294 Certain inspection issues and other questions in the excise duty area). In principle, for such a system to be effective, permits must only be granted to operators who handle tobacco commercially and not to private individuals. In practice, this would prohibit private individuals from buying or handling other forms of tobacco. Such a measure would be very radical and it can be questioned whether it would solve the problems mentioned above. It can also be questioned whether it is really justified to prohibit private individuals from buying other forms of tobacco when they are allowed to buy smoking tobacco. The main argument in favour of such a measure is that private individuals should not be allowed to handle untaxed tobacco. However, this can be resolved in a less radical way by taxing the other forms of tobacco. In conclusion, there is no need to introduce any regulations regarding a requirement for a permit or licence for handling other forms of tobacco. Instead, consideration should be given to whether a tax should be levied on such tobacco that has not hitherto been taxed.

3.2 Taxation and demarcations

<p>The proposal in the memorandum: Other forms of tobacco, i.e. tobacco which is not part of a living plant and which is not excisable as cigarettes, cigars, cigarillos, smoking tobacco, snus or chewing tobacco should be taxed.</p>
--

Reasons for the proposal: In Section 3.1 above, the assessment was made that a licensing system for tobacco would be a disproportionate measure since the problems can be more easily handled through taxation. To redress the differences between excisable smoking tobacco and non-excisable tobacco as well as to counter fraud, the introduction of a tax on such tobacco as is not currently excisable is proposed. As a starting point, it can be stated that excise duty legislation at both EU level and in Swedish law does not have a definition of such tobacco. It is currently defined indirectly, in that such tobacco is not included in any of the categories that are excisable. The term “raw tobacco” derives from the so-called Customs Tariff and thus not from tax law. In the debate surrounding the handling of other forms of tobacco, a variety of concepts about other forms of tobacco such as “loose tobacco” and “unprocessed tobacco” can also be found. The problem with these terms is that they can sometimes be applicable to both smoking tobacco and other forms of tobacco. It has been deemed that the term “raw tobacco” has such a strong link to the customs regulations that using the same term in excise duty legislation may cause misunderstanding. Given this, it seems most appropriate to continue using the term “other forms of tobacco” as a designation of the new tax base.

Unofficial translation

The new provisions should be introduced into the Act (1994:1563) on Tobacco Excise Duty since that Act already contains provisions regarding excise duty on both harmonized and non-harmonized tobacco.

Practical reasons suggest that a negative definition of the term should be used in the Act on Tobacco Excise Duty, i.e. that such tobacco as is not included in any category of taxable tobacco should be considered to be “other forms of tobacco”. A definition of what is considered to constitute other forms of tobacco could, in addition to the difficulties in defining this category, also lead to new demarcation problems. It is therefore proposed that tobacco, which is not excisable under the regulations on cigarettes, cigars, cigarillos, smoking tobacco, snus or chewing tobacco, shall be considered to be “other forms of tobacco”. At the same time, the intention is not to tax living plants in the tobacco genus. It is therefore proposed that the term should only include tobacco which is not part of a living plant. This means that tobacco that has been actively harvested from a plant or which has come loose from it for natural reasons falls under the definition. However, the liability to pay excise duty only arises if the manufacturing is commercial (see Section 3.4 below). Even whole plants are covered by the term if they are no longer alive. Tobacco leaves can be mentioned as another example of tobacco that will incur an excise duty liability, regardless of whether they are dried or not. Even tobacco refuse, which under current regulations falls outside the definition of smoking tobacco, because, for example, it is not considered capable of being smoked or which is capable of being smoked but not put up for retail sale, will thus become excisable. In practice, the proposed definition will mainly apply to tobacco leaves which have not been cut, split, twisted or pressed into blocks, processed tobacco which is not capable of being smoked without further industrial processing, as well as tobacco refuse which is either not capable of being smoked or not put up for retail sale. However, situations may arise when other forms of tobacco are included in another product. In such case, similar to what applies to smoking tobacco, the whole product becomes excisable and the excise duty is calculated based on the total weight of the goods.

The definition means that all tobacco which is not part of a living plant becomes excisable. An assessment is first made regarding whether the tobacco is excisable as cigarettes, cigars, cigarillos, smoking tobacco, snus or chewing tobacco. If this is not the case, it is excisable as other forms of tobacco.

The term tobacco product has already been used in the Act for those goods that fall under its scope. In introducing the new category of other forms of tobacco, it can be debated whether it should be included under this term. Allowing the term other forms of tobacco to be included under the term tobacco product, simplifies the drafting of the proposed legislation and should also facilitate its application. It therefore seems justified to allow other forms of tobacco to be included in the term tobacco product as defined in the Act on Tobacco Excise Duty. To clarify how the term tobacco product is defined in the Act on Tobacco Excise Duty, a specific definition of the term should be introduced into the Act.

As far as the terms snus and chewing tobacco are concerned, they currently lack legal definitions. Regarding such tobacco products, the Act on Tobacco Excise Duty says that excise duty shall be paid for snus and chewing tobacco as referred to under heading no. 2403 of the Combined Nomenclature pursuant to Council Regulation (EEC) no. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff. However, CN heading 2403 includes significantly more products than just snus and chewing tobacco, for example smoking tobacco. Thus, in order to be taxed, the products must, firstly, fall under CN heading 2403 and, secondly, be “snus” or “chewing tobacco”. However, the latter two terms are not defined in the Act on Tobacco Excise Duty. When

Unofficial translation

interpreting the terms, some guidance can be taken from the explanatory notes to CN heading 2403. However, these are not legally binding. The question arises whether, when introducing a negative definition of the term “other forms of tobacco”, definitions of snus and chewing tobacco also need to be introduced in the text of the Act. Currently, there appear to be relatively few problems in tax law as regards demarcating between what is considered to constitute snus or chewing tobacco. The cases where demarcation is an issue usually concern whether a product should be subject to the ban¹ under EU law on the sale of snus outside Sweden. How a product is taxed under Swedish national law has no direct effect on the rules regarding sale under EU law. There is no intention to make any changes in tax law as regards these tobacco products. If such a definition were to be introduced into tax law, there is a risk that goods that are now considered snus or chewing tobacco would fall outside the definition or vice versa. Therefore, the assessment is that there are no grounds for introducing any definitions of snus or chewing tobacco in tax law at the present time.

Legislative proposal

The proposal gives rise to the introduction of a new paragraph, Section 35(a), and amendments to Section 1 of the Act on Tobacco Excise Duty.

3.3 Tax rate

The proposal in the memorandum: The same amount of excise duty shall be paid for other forms of tobacco as for smoking tobacco.

Reasons for the proposal: In practice, the existing tobacco category that other forms of tobacco can be best compared to is smoking tobacco. Therefore, when determining excise duty on other forms of tobacco, there are reasons to use excise duty on smoking tobacco as a starting point. It can be argued that, in most cases, a smaller part of other forms of tobacco will eventually be consumed as compared to smoking tobacco and that it should therefore be subject to a lower rate of excise duty. It can also be noted that those EU member states that have chosen to impose an excise duty on other forms of tobacco have chosen the same level of excise duty as for smoking tobacco. Such an excise duty level would mean that there is no financial incentive to sell smoking tobacco as other forms of tobacco. It would also hamper illicit manufacture of cigarettes or other tobacco products, since the raw material used in the production would be being taxed at the same level as smoking tobacco. It is therefore proposed that the tax rate for other forms of tobacco should be the same as for smoking tobacco. This means that the tax rate for other forms of tobacco would amount to SEK 1,957 per kilogram, with adjustment following the annual recalculation of the amount of excise duty to be paid for the various types of tobacco (Sections 2, 8, 35 and 42). Upon entry into force on 01 June 2021 (see Section 3.8 below), the amount of excise duty specified in the Act would need to be set to the level applicable for 2021. However, this cannot be determined until the consumer price index for June 2020 is known. Therefore, the amount of excise duty for 2020 has been listed in the proposed wording of the Act. An entry into force in 2021 also means that the base year used for recalculation will be moved forward from the current 2016 to 2020. The reason is to facilitate the practical application of these provisions.

¹ The prohibition can be found in Article 17 of Directive 2014/40/EU.

Unofficial translation

The foregoing means that the tax rates for other tobacco products listed in the Act also need to be changed to 2021 levels.

Legislative proposal

The proposal gives rise to provisions in a new Section 35(a) and amendments to Sections 2, 8, 35 and 42 of the Act on Tobacco Excise Duty.

3.4 Taxpayer and when the liability to pay excise duty becomes chargeable

The proposal in the memorandum: Other forms of tobacco should be subject to the same regulations on the liability to pay excise duty and the time point when the excise duty liability becomes chargeable as for snus and chewing tobacco. The same applies to the regulations for stock keepers.

Specific regulations on distance selling are introduced for snus, chewing tobacco and other forms of tobacco.

Reasons for the proposal: There is no reason why the general regulations on who is liable to pay excise duty, what circumstances trigger the liability to pay excise duty or the time points when the excise duty liability becomes chargeable, should be different for other forms of tobacco as opposed to snus and chewing tobacco. In practice, these regulations also largely correspond to the regulations applicable to harmonized tobacco products, such as smoking tobacco. The big difference between the procedure for snus and chewing tobacco compared with harmonized tobacco products is that instead of a harmonized duty suspension arrangement there is a national stock keeping system. As with other types of tobacco, there is a need for operators who commercially handle other forms of tobacco to be able to postpone the time of taxation. Therefore, since the proposed tax is a national tax, this should be dealt with within the national stock keeping system. It is therefore proposed that the regulations on which operators are excisable, what circumstances trigger the excise duty liability and when the excise duty liability becomes chargeable shall be the same for other forms of tobacco as for snus and chewing tobacco, including the regulations for stock keepers. This means that the person liable to pay excise duty is the person who has been approved as stock keeper, or who otherwise commercially manufactures, brings in, receives or imports other forms of tobacco or who uses other forms of tobacco that have been acquired duty-free for purposes other than those which were the basis for the duty exemption. The excise duty liability for approved stock keepers becomes chargeable when the other form of tobacco is delivered to a buyer who is not an approved stock keeper or used for purposes other than sale or if the approval is revoked. For persons who are not stock keepers, the excise duty liability becomes chargeable when the other form of tobacco is manufactured or imported into Sweden. When importing, the excise duty liability is linked to the obligation to pay customs duties. For other forms of tobacco, the term “manufactured” can in some cases seem overly linguistic, since no manufacturing takes place in the real sense of the word. However, there are advantages to using a single unified term. For other forms of tobacco, the term manufacture shall be interpreted as any measure which causes the tobacco to comply with the requirements to be considered as other forms of tobacco. For example, it may be that a tobacco leaf is picked from a living plant or that

Unofficial translation

tobacco that meets the requirements to be classified as a particular tobacco product, such as smoking tobacco, is treated so that it no longer meets the requirements. It should be noted that no active measure is required in order for manufacturing to be considered to have occurred. If a tobacco leaf naturally falls loose from a tobacco plant during commercial tobacco cultivation, it is regarded as manufactured in this context.

One situation for harmonized tobacco products that is regulated specifically is so-called distance selling. This includes situations where a person in Sweden who is not engaged in an independent economic activity acquires taxed tobacco products and the goods are transported here from another EU member state by the seller or by someone else on behalf of the seller. In such case, it is the seller who becomes excisable. The situation in which this is normally applicable is when private individuals purchase tobacco products from foreign sellers. For snus and chewing tobacco, there is no specific regulation in tax law for distance selling, since in practice such sales only occur to an extremely limited extent. However, for other forms of tobacco, such trade could be much more extensive. Therefore, there is a need to clarify what applies in these situations. It is therefore proposed that regulations on distance selling of other forms of tobacco are introduced into the Act on Tobacco Excise Duty.

With regard to snus, this product is banned from being placed on the market in other EU member states (Article 17 of the Tobacco Products Directive), which should mean that distance selling should only occur in exceptional cases. As mentioned above, in practice, distance selling of chewing tobacco only occurs to an extremely limited extent. However, to the extent to which such sales of chewing tobacco and snus do occur and are subject to a provision on distance selling, it may be considered appropriate for this to be taxed. Improved conditions for checking such movements can then also be achieved through the proposals made in Section 3.6. Given this, the new provisions on distance selling are also proposed to include chewing tobacco and snus.

The scope of the provisions on distance selling should be designed in the same way as for harmonized tobacco products. Such rules will apply to e-commerce and mail order and telephone sales where tobacco products are imported into Sweden from another EU member state. Furthermore, a regulation is proposed that the person receiving other forms of tobacco dispatched to Sweden by a distance seller should be excisable instead of the seller if the seller has not pledged security (see Section 3.6). This situation also corresponds to the situation that applies for harmonized tobacco products.

Legislative proposal

The proposal gives rise to the introduction of three new sections, Sections 38(b)–38(d) and amendments to Sections 36, 37, 38, 39, 40 and 40(a) of the Act on Tobacco Excise Duty.

3.5 Right of deduction and excisability in commercial manufacture

The proposal in the memorandum: Stock keepers who are not approved warehouse keepers have the opportunity to make a deduction for excise duty by an amount equal to the excise duty on the harmonized tobacco products which the stock keeper has recycled during the manufacture of snus, chewing tobacco or other forms of tobacco. An exemption from the liability to pay excise duty for stock keepers for the snus, chewing tobacco or other forms of tobacco which are recycled during the manufacture of excisable tobacco products has been introduced. Warehouse keepers who are not approved stock keepers have the opportunity to make a deduction by an amount equal to the excise duty on the snus, chewing tobacco or other forms of tobacco which the warehouse keeper has recycled during the manufacture of harmonized tobacco products. For approved stock keepers, chewing tobacco, snus and other forms of tobacco which has been completely destroyed under the supervision of the Swedish Tax Agency is exempt from the liability to pay excise duty.

Reasons for the proposal: For approved warehouse keepers, current regulations specify that there is no liability to pay excise duty when a product has been reused during manufacture. A warehouse keeper can also make a deduction for excise duty already paid on goods entering the tax warehouse. This means that if, for example, a warehouse keeper uses smoking tobacco to manufacture cigarettes, the smoking tobacco will not be taxed. Although not explicitly stated in the act, the regulations have been interpreted to the effect that a warehouse keeper can also use smoking tobacco to manufacture snus or chewing tobacco without the smoking tobacco being taxed. No analogous opportunities exist for stock keepers at present. Hence, if a stock keeper who is not a warehouse keeper uses smoking tobacco to manufacture snus, tobacco excise duty is paid both for the smoking tobacco used to manufacture the snus and the snus that is produced, if it is sold to a non-stock keeper or otherwise utilised.

The regulations for stock keepers therefore need to be changed so that the tobacco products used in manufacturing are not taxed, with excise duty only being paid on the final product. Since a stock keeper is not allowed to handle untaxed harmonized tobacco products, such as smoking tobacco, the harmonized tobacco products used during manufacturing have already been taxed. Stock keepers can either be given the opportunity to deduct the excise duty paid or have the excise duty refunded. Since deductions can be made via a standard tax return, such a solution reduces administration for both the Swedish Tax Agency and the taxpayers as compared to repayment. Deducting the excise duty is therefore more appropriate than a refund system. Since the stock keeper system does not include harmonized tobacco products, such a deduction should not be issued on the actual excise duty but rather by an amount corresponding to the excise duty on the goods. It is therefore proposed that stock keepers who are not approved warehouse keepers are given the opportunity to make a deduction for excise duty by an amount equal to the excise duty on the cigarettes, cigars, cigarillos or smoking tobacco which the stock keeper has recycled during the manufacture of snus, chewing tobacco or other forms of tobacco.

When a stock keeper, instead of using harmonized tobacco products, uses snus and chewing tobacco in its manufacturing, the snus and chewing tobacco are deemed to be used for other purposes than sales, which normally triggers the excise duty liability. The same will apply to other forms of tobacco. Therefore, an exemption for other forms of tobacco that has been recycled during manufacture of excisable tobacco products needs to be introduced. Snus and chewing tobacco should also be included. An exemption from the liability to pay excise duty for stock keepers for the snus, chewing

Unofficial translation

tobacco or other forms of tobacco which are recycled during the manufacture of excisable tobacco products is therefore proposed.

The regulations for warehouse keepers also need to be adjusted. A warehouse keeper cannot register untaxed non-harmonized tobacco products in the tax warehouse. Hence, if a warehouse keeper who is not a stock keeper uses other forms of tobacco for manufacturing, the other form of tobacco will be taxed. Avoiding double taxation therefore requires, in an analogous way to that proposed above for stock keepers, warehouse keepers to have the opportunity to make a deduction by an amount equal to the excise duty on the non-harmonized tobacco products used during the manufacture. Although in practice using other forms of tobacco during the manufacture is considered the most relevant, there is no reason not to also allow deductions if snus or chewing tobacco has been used during manufacturing. It is therefore proposed that warehouse keepers who are not approved stock keepers are given the opportunity to make a deduction by an amount equal to the excise duty on the snus, chewing tobacco or other forms of tobacco which the warehouse keeper has recycled during the manufacture of cigarettes, cigars, cigarillos or smoking tobacco.

Nordic Snus AB has requested the Swedish Ministry of Finance to amend the act so that the proposed right of deduction for stock keepers above is applied retroactively (ref. no. Fi2018/01142/S2). However, the starting point should be that tax legislation should not be given retroactive effect unless there are good reasons to do so. New case law regarding the interpretation of what is considered to be smoking tobacco has emerged. However, this is not a consequence of amended regulations, but rather a clarified legal situation, mainly due to the European Court of Justice's ruling in the *Eko-Tabak* judgement. However, the fact that the legal situation has been affected by new case law is not in itself a reason to give the regulations on deduction retroactive effect. Hence, on balance, there seem to be no reasons to give retroactive effect to the proposed regulations on deduction.

Finally, residual products that cannot be sold but which are still excisable products may arise during manufacturing. Warehouse keepers have an exemption from the liability to pay excise duty for tobacco products which, under a duty suspension arrangement, are totally destroyed under the supervision of the Swedish Tax Agency. No such opportunity is available for stock keepers. However, situations can arise where stock keepers also need to destroy residual products without a liability to pay excise duty being triggered. In particular since the proposed definition of other forms of tobacco will, in principle, include all residual products. It is therefore proposed that, for approved stock keepers, chewing tobacco, snus and other forms of tobacco which has been completely destroyed under the supervision of the Swedish Tax Agency shall be exempt from the liability to pay excise duty.

Legislative proposal

The proposal gives rise to the introduction of two new sections, Sections 33 and 39(a) and amendments to Sections 21 and 40 of the Act on Tobacco Excise Duty.

3.6 Improved conditions for checking snus, chewing tobacco and other forms of tobacco

The proposal in the memorandum: Regulations on requirements for notification and pledging security are introduced for sellers engaged in distance selling of snus, chewing tobacco or other forms of tobacco from another EU member state to Sweden. Equivalent regulations are also introduced for persons who, other than by distance selling, commercially import or receive snus, chewing tobacco or other forms of tobacco without being approved as a stock keeper.

An opportunity to be approved as a registered distance seller is introduced for persons who sell chewing tobacco or other forms of tobacco to Sweden through distance selling on more than one occasion.

A liability to pay excise duty is introduced for persons who, without being a stock keeper, commercially possess snus, chewing tobacco or other forms of tobacco without excise duty on the goods having been declared in Sweden.

The scope of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties is extended to include the movements of snus, chewing tobacco and other forms of tobacco subject to the notification obligation and the obligation to pledge security.

Reasons for the proposal: Cigarettes, cigars, cigarillos and smoking tobacco, alcohol products and certain energy products are subject to common EU rules on the movement of goods (Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC). The provisions of the directive mean that operators who move excise goods must fulfil certain formal requirements. The detailed design of the requirements differs depending on whether it concerns movements under a duty suspension arrangement, movements during distance selling or movements of taxed goods. However, in all cases, it means that the operators should contact the relevant authorities before the movement and pledge security for the excise duty on the goods. In many cases, there is also a requirement that accompanying documents or reference codes accompany the movements. Provisions exist in the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties to check compliance with the provisions in the Excise Duty Directive on the movement of excisable goods. The provisions in the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties give the Swedish Customs Authority the possibility to carry out checks of road transports and postal consignments. Snus, chewing tobacco and other forms of tobacco are not subject to the procedural rules in the Excise Duty Directive. There are no national requirements for compliance with certain formal obligations when moving snus and chewing tobacco.

The provisions specifying that operators moving goods shall provide notification and pledge security for the excise duty are intended to give the authorities concerned the opportunity to know that a movement is in progress, thereby improving opportunities to ensure that the forthcoming tax claim is paid. If the authorities know that a movement is taking place, they have the opportunity to make a risk assessment and adopt the control measures they deem appropriate. The requirements for notification and security also create the conditions for the authorities to inspect transports and, in event of suspicion of fraud, carry out checks on whether the requirements have been fulfilled before the

Unofficial translation

movement begins. One of the aims of the amendments proposed in this memorandum is to reduce the differences between harmonized tobacco products and those products which are not subject to the procedural rules in the Excise Duty Directive. As stated in Section 3.4, it can be assumed that for other forms of tobacco, trade from other EU member states by persons other than stock keepers may occur to a larger extent than is currently the case with snus and chewing tobacco. Hence there is a need for the authorities concerned to have effective tools to ensure that excise duties are levied on such goods at their disposal. It can also be noted that the Swedish Customs Authority et. al. stated as early as in the final report from the authority's joint mission that it would be appropriate if snus and chewing tobacco were also subject to the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties to make it possible for the Swedish Customs Authority to check commercial imports of such goods from other EU member states (ref. no. Fi2015/05353/S3 and Government Bill 2017/18:294 p. 33).

Notification and pledging security

To facilitate checks and ensure that the conditions for handling harmonized and non-harmonized tobacco products, respectively, are more equal, it is considered appropriate that provisions on notification and pledging security for operators moving snus, chewing tobacco and other forms of tobacco are introduced.

In the same way as in the harmonized procedure, it is proposed that a seller who sells snus, chewing tobacco and other forms of tobacco to Sweden via distance selling shall be notified with the Swedish Tax Agency and pledge security for payment of the excise duty on the goods being dispatched from the other EU member state. For harmonized tobacco products, there is also a requirement for distance sellers who sell goods on more than one occasion to be represented by a Swedish Tax Agency approved tax representative. A distance seller who has such an approved tax representative may, as for approved operators such as warehouse keepers and stock keepers, report excise duty per accounting period instead of per occasion. It is not considered relevant to introduce a requirement for distance sellers to have a tax representative in this case. Instead, as a general rule, it is proposed that the distance seller notifies the Swedish Tax Agency in advance of each movement and pledges security for the excise duty on the goods subject to the movement.

The provisions also propose that persons who are not approved as a stock keeper and who commercially import or receive snus, chewing tobacco or other forms of tobacco from another EU member state shall notify the goods to the Swedish Tax Agency and pledge security for payment of the excise duty on the tobacco. If the excise duty is not paid in due time, the pledged security may be claimed. This corresponds to what applies to the import of harmonized taxed goods under Section 17 of the Act on Tobacco Excise Duty.

For harmonized goods, under Section 26 of the Act on Tobacco Excise Duty, a simplified accompanying document shall be drawn up to accompany the goods while they are being moved. There is no proposal for a requirement for such simplified accompanying documents to apply to the movements of snus, chewing tobacco and other forms of tobacco.

Registered distance seller of chewing tobacco and other forms of tobacco

A registered distance seller who intends to sell chewing tobacco and or forms of tobacco to Sweden on more than one occasion, and who wishes to report excise duty per accounting period, should be

Unofficial translation

given the opportunity to apply to be approved as a registered distance seller of chewing tobacco and other forms of tobacco. However, in light of the prohibition on placing snus on the market that exists in other EU member states, it is considered neither necessary nor appropriate for snus to be subject to this possibility. The corresponding eligibility requirements that apply to other approvals under the Act on Tobacco Excise Duty should apply to approval. A registered distance seller of chewing tobacco and other forms of tobacco should, in the same way as for distance sellers under Section 16 of the Act on Tobacco Excise Duty, have the opportunity to pledge security based on an estimate of annual excise duty instead of pledging security for each movement. Equivalent provisions on revoking approval and liability to pay excise duty in the event of bankruptcy should be introduced as for those that apply to approved stock keepers. The security for such a registered distance seller, as for distance sellers under Section 16 of the Act on Tobacco Excise Duty, should amount to a sum equivalent to ten percent of the estimated annual excise duty on the goods. The pledge security may be claimed if the excise duty is not paid in due time.

Taxation of holdings

For harmonized goods, in addition to the situations mentioned above, when someone is liable to pay excise duty when goods are imported into Sweden, there are also provisions on excisability for those who hold goods outside the duty suspension arrangement, without excise duty for the goods having been reported in Sweden (Section 9, first paragraph (8), of the Act on Tobacco Excise Duty). The provision applies to persons who have neither imported nor received the goods in such a way that they have been subject to the liability to pay excise duty, but who for some reason still possess a taxed product in Sweden. The preparatory works to the said provision state, *inter alia*, that with a provision on the liability to pay excise duty when in possession it is clear that the liability to pay excise duty can fall on the person who imported a taxed product from another EC member state, the person who ordered the goods and subsequently received them here in Sweden or whoever else possesses the goods here (Government Bill 2009/10:40 pp. 139-141). As regards snus, chewing tobacco and other forms of tobacco, situations may also arise where goods are encountered for which Swedish excise duty has not been paid, but where it is not possible to investigate who imported or received the goods here. To reduce the risk of goods on which Swedish excise duty has not been paid being traded on the Swedish market, it is considered that snus, chewing tobacco and other forms of tobacco should also be included. Similar to what applies to manufacturing of non-harmonized tobacco products under the current Section 36(2) of the Act on Tobacco Excise Duty, the provision should be limited to commercial actions. In the same way as in the harmonized procedure, the provision shall only apply if the person possessing the goods is not liable to pay excise duty for the goods under any other provision. Thus, the excise duty liability under the new provision presupposes that the goods are not owned by a stock keeper.

The Act on Excise Duty Monitoring

To make it possible to effectively check the obligations to notify and pledge security, it is also proposed that the scope of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties is extended to include movements of snus, chewing tobacco and other forms of tobacco. This entails the Swedish Customs Authority being given the opportunity to carry out transport checks even in the case of snus, chewing tobacco and other forms of tobacco provided the goods can be assumed to be subject to requirements for notification or security pledges. Transport checks can thus be carried out if it can be assumed that the

Unofficial translation

goods are subject to a movement in connection with distance selling or commercial import of snus, chewing tobacco or other forms of tobacco from another EU member state without being approved as a stock keeper. Since snus, chewing tobacco or other forms of tobacco are goods which are relatively easy to move via postal consignment, it is considered appropriate that the regulations on checks of postal consignments be applied in the same way as for harmonized tobacco products.

Under the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties, the Swedish Customs Authority may, *inter alia*, seize excisable goods if there is reason to assume that the transport is not taking place in accordance with the formal regulations applicable to the movement. The preventive detention may be made in order to check whether excise duty shall be paid in Sweden and, in such case, to determine who is excisable, to check whether the requirements for transfer are being complied with and pending payment of the excise duty. A preventive detention ends, *inter alia*, when grounds for the detention no longer exist.

If an excise duty liability has arisen for an alcohol or tobacco product that has been seized, the Swedish Customs Authority shall, in accordance with Chapter 3 Section 5 of the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties, decide on the excise duty on the product. Excise duty shall then be charged at the tax rates specified in the Act on Alcohol Excise Duty or the Act on Tobacco Excise Duty. There is, however, a derogation in Chapter 3 Section 5(a) of the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties under which the Swedish Customs Authority, in a situation where it lacks sufficient information to determine the excise duty, may charge it in accordance with certain specified standard flat rates. It is unclear when this provision can be applied as regards such tobacco products where the standard amount is determined solely on the basis of the weight of the goods or the number of objects to be taxed. This applies to cigarillos and cigars as well as smoking tobacco. In these cases, it is fairly easy to determine the relevant amount of excise duty, since it is sufficient to take the weight of the goods or the number of taxable objects and multiply this figure by the current tax rate. Since the standard flat rates for these goods are also determined on the basis of weight or number, in cases where it is possible to use the standard flat rate, it will also be possible to determine the regular amount. Hence, situations should never arise where information to calculate the regular tax is missing but where it is still possible to use the standard flat rate for these goods. However, with regard to cigarettes, the amount of excise duty is based, firstly, on a tax per unit, and secondly, on a value-based component. Since the value of the goods is not necessarily known, in these cases a standard flat rate is needed. Given this, a regulation with standard flat rates for cigarillos and cigars as well as smoking tobacco is deemed unnecessary. For the same reason, it is considered that there is no reason to introduce standard flat rates for snus, chewing tobacco and other forms of tobacco which, in other cases, should be subject to the proposal for amendments to the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties. In these cases, the excise duty will already be clear from the weight of the goods. The standard flat rate for spirits, fortified wine, wine, strong beer as well as cigarettes have been updated to better match current tax rates under the Act (1994:1564) on Alcohol Excise Duty and the Act on Tobacco Excise Duty.

For tobacco products, the Act (2018:2088) on Tobacco and Related Products contains age limits for possession and requirements as regards health warnings. The provisions present in Chapter 2 Sections 16 and 16(a) of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties as regards the Swedish Customs Authority, in certain cases, being able to decide not to hand over goods and in Chapter 2 Section 13(a) on remission of

Unofficial translation

excise duty, refer to those situations subject to the Act on Tobacco and Related Products. The new category other forms of tobacco covers a broad group of products, but to the extent that they fall within the scope of Chapter 5 Section 20 of the Act on Tobacco and Related Products, they should also be subject to the above mentioned provisions in Chapter 2 Sections 13(a), 16 and 16(a) of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties. Snus and chewing tobacco should also be subject to the provisions. The term tobacco product in the Act on Tobacco and Related Products is based on the definition in the Tobacco Products Directive. To ensure that the scope of Chapter 2 Sections 13(a) and 16 of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties is consistent with the scope of the prohibition on persons under the age of 18 bringing in tobacco products in accordance with Chapter 5 Section 20 of the Act on Tobacco and Related Products, it is proposed that explicit references to that provision are introduced into Chapter 2 Sections 13(a) and 16 of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties.

The provisions in the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties also give the Swedish Customs Authority the right to impose transport surcharges if the formal provisions that apply to a movement have not been followed. This may be relevant, *inter alia*, if the requirements for notifying movements and pledging security have not been met or if the driver does not have the required documents. It is proposed that an opportunity to impose transport surcharges on persons who have not complied with the regulations for notifying and pledging security for movements of snus, chewing tobacco or other forms of tobacco is introduced. However, for these goods there is no requirement to carry accompanying documents or reference codes when the goods are being moved. Therefore, transport surcharges may not be relevant for the driver in the event such documents are missing.

Chapter 5 of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties contains provisions on criminal sanctions for certain listed offences. Since for snus, chewing tobacco and other forms of tobacco it is only movements during distance selling and cases where persons who are not approved stock keepers import or receive goods from another EU member state which are subject to the provisions of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties, only such movements will be subject to Chapter 5 of the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties.

The excise duty on other forms of tobacco currently proposed does not mean that any border checks should take place at Sweden's border with other member states. The Swedish Customs Authority's checks under the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties are not connected to border zones but rather refer to the entire movement of goods to the recipient. Nor does the proposal mean that excise duty must be reported and paid in connection with goods physically crossing the Swedish frontier. The proposals aim to ensure that excise duty is paid in Sweden by providing the competent authorities with information about the forthcoming movement and pledging security for the excise duty. The formalities are linked to the circumstance triggering the excise duty, namely, the acquisition of the goods, not the frontier crossing. The obligations correspond to the requirements laid down in the Excise Duty Directive for those goods subject to the harmonized procedural rules. Overall, the proposed requirements are not deemed to constitute such formalities at frontiers as are referred to in Article 1(3) of the Excise Duty Directive (see, *inter alia*, the European Court of Justice's judgement in case no. C-349/13, ECLI:EU:C:2015:84). The design of the proposed provisions is also deemed to otherwise comply with the requirements of EU law.

Unofficial translation

Legislative proposal

The proposal gives rise to provisions in new Sections 38(b) and 38(c), the introduction of a new Section 38(e) of the Act on Tobacco Excise Duty, amendments to Section 36 of the Act on Tobacco Excise Duty and amendments to Chapter 1 Sections 1, 2 and 4, Chapter 2, Sections 13(a) and 16, Chapter 3 Section 5(a) and Chapter 4 Section 1 of the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties.

3.7 Some supplementary amendments

The proposal in the memorandum: The regulations on registration and audit also apply to registered distance sellers of chewing tobacco and other forms of tobacco.

The scope of the regulations on the erasure of data in the tax database is extended to include registered distance sellers of chewing tobacco and other forms of tobacco.

The same definition of tobacco products has been introduced into the Act (1994:1551) on Freedom from Taxation upon Import, etc. as in the Act on Tobacco Excise Duty. Other forms of tobacco has been added to the list of standard flat rates for customs and excise duties.

In the Act on Export Shops, other forms of tobacco has been added to the list of untaxed Union goods in event of sale to passengers travelling outside the EU's tax territory.

The memorandum's assessment: The personal data processing that the proposals in the memorandum give rise to is compatible with the EU's Data Protection Regulation.

Reasons for the proposal: It follows from Section 34 of the Act on Tobacco Excise Duty that in the case of tax procedures, the provisions in the Tax Procedures Act (2011:1244) or, in certain cases, the Customs Act (2016:253), shall apply. Thus, as regards excise duty on other forms of tobacco, provisions regarding accounting of excise duty, payment, audit, re-examination, appeal etc. are found in the Tax Procedures Act.

Registration

Under Chapter 7 Section 1, persons who are distance sellers pursuant to Section 16, first paragraph, of the Act on Tobacco Excise Duty shall be registered by the Swedish Tax Agency. The same should also apply to persons who are approved as registered distance sellers of chewing tobacco and other forms of tobacco under the proposed Section 38(c) of the Act on Tobacco Excise Duty, which is why a reference to Section 38(c) of the Act on Tobacco Excise Duty should be added into Chapter 7 Section 1, 10(c), of the Tax Procedures Act.

Under Chapter 7 Section 1 of the Tax Procedures Act, persons who are approved as stock keepers pursuant to Section 38 of the Act on Tobacco Excise Duty shall be registered by the Swedish Tax Agency. Through the proposed amendments in Section 38 of the Act on Tobacco Excise Duty, this will also apply to persons who are approved as stock keepers of other forms of tobacco (see Section 3.4).

Unofficial translation

Tax return

It follows from Chapter 26 Section 6 of the Tax Procedures Act, that persons who are registered under Chapter 7 Section 1 of the Tax Procedures Act shall submit an excise duty return for each accounting period, usually monthly. Other persons liable to pay excise duty on other forms of tobacco shall, under Chapter 26 Section 8 of the Tax Procedures Act, report the excise duty in a separate tax return for each event where an excise duty liability is incurred. This therefore applies to persons who are distance sellers according to the proposed Section 38(b), i.e. distance sellers of snus and distance sellers of chewing tobacco and other forms of tobacco who are not approved as registered distance sellers and persons who, without being stock keepers, for example, commercially import or receive goods from another EU member state or commercially manufacture other forms of tobacco. Approval as a registered distance seller of chewing tobacco and other forms of tobacco only includes these products, which means that if such a person were also to sell snus through distance selling, the snus sale would need to be declared on every occasion. Even persons who are liable to pay excise duty for snus, chewing tobacco or other forms of tobacco in accordance with the new provision on the liability to pay excise duty when in possession are required to report the excise duty in a separate tax return on every occasion. The registration means that when the liability to pay excise duty becomes chargeable, the Swedish Tax Agency already knows that the taxpayer is approved and thus trusted to retrospectively report the excise duty collected.

Audit

To enable the Swedish Tax Agency to audit the person applying for approval as a registered distance seller of chewing tobacco and other forms of tobacco, in the same way as currently applies to the person applying for other approvals under the Act on Tobacco Excise Duty, the provisions in Chapter 41 Section 3 of the Tax Procedures Act should be supplemented with a reference to registered distance sellers of chewing tobacco and other forms of tobacco.

Personal data processing

Both stock keepers of other forms of tobacco and registered distance sellers of chewing tobacco and other forms of tobacco will thus be registered by the Swedish Tax Agency. Such a registration may entail the Swedish Tax Agency processing certain personal data about natural persons. Otherwise, the starting point is that a registration of said stock keepers and registered distance sellers will in most cases refer to legal persons. The data that the Swedish Tax Agency may process primarily comprises address and contact details as well as data about accounting periods and year-end dates as well as the stated basis for the application. It is therefore clear that the proposal may give rise to such personal data processing as is subject to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter called the EU's Data Protection Regulation. The EU's Data Protection Regulation is binding in all respects and directly applicable in all EU member states and must be applied from 25 May 2018. The Data Protection Regulation constitutes the general regulation of personal data processing within the EU. With regard to the Swedish Tax Agency's personal data processing in its tax operations, the Act (2001:181) on Data Processing in the Swedish Tax Agency's Tax Operations contains provisions supplementing the EU's Data Protection Regulation. In addition

Unofficial translation

to the processing of personal data about individuals, certain provisions of the Act also apply to the processing of data on legal persons (see Chapter 1 Section 1, second paragraph).

The legal basis for the personal data processing is that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority (Article 6(1)(e) of the EU's Data Protection Regulation). The current basis for the processing is laid down by national law in the manner required in accordance with Article 6(3) of the Data Protection Regulation. The legal basis is laid down in the Regulation (2017:154) with Instructions for the Swedish Tax Agency, the Tax Procedures Act (2011:1244) and the Act on Tobacco Excise Duty.

The data that will be processed is not such sensitive personal data as are referred to in Article 9(1) of the EU's Data Protection Regulation. The data are either related to the business operation or are contact details. Infringement of the personal privacy of data subjects should therefore be relatively small. In balancing the personal privacy of the data subject and the need for the personal data to be processed, the Government considers that the processing is proportionate (see Government Bill 2019:20.47, p. 37).

The data processing that the proposal gives rise to at the Swedish Tax Agency is permitted in accordance with the Act on Data Processing in the Swedish Tax Agency's Tax Operations (see p. 37 of the Government Bill). However, an amendment must be made to the effect that data and documents at the Swedish Tax Agency concerning registered distance sellers shall be erased seven years after the end of the calendar year in which the approval was revoked, which constitutes an exemption from the main rule in Chapter 2 Section 11. This is the same time as applies under Chapter 2 Section 12, third paragraph, of the same act to corresponding data on stock keepers under the Act on Tobacco Excise Duty. The reason why it is necessary to store the data during this time period is that it should be possible to check in retrospect, especially in event of a review, what data constituted the grounds for a decision. Such a review may take place up to six years from the end of the calendar year in which the tax year expired. Such a provision is therefore deemed to be compatible with the principle of storage limitation in Article 5(1) of the EU's Data Protection Regulation. In summary, the personal data processing that the proposal gives rise to is expected to be compatible with the EU's Data Protection Regulation. Apart from the amendment proposed in the Act on Data Processing in the Swedish Tax Agency's Tax Operations, the existing regulations in the personal data area constitute sufficient regulation of the personal data processing that may be carried out by the Swedish Tax Agency as a result of the proposal. Therefore, there is no need to introduce any further regulation of this processing.

The Swedish Customs Authority's access to view data

In order for the Swedish Customs Authority to be able to effectively carry out the checks under the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties that are proposed in Section 3.6, it is important that the Authority has access to data from the Swedish Tax Agency about the operators and movements concerned. This concerns, for example, information about whether the person being checked has notified the movement and pledged security for it or whether or not the person is an approved stock keeper or registered distance seller. Chapter 2 Section 8 of the Act on Data Processing in the Swedish Tax Agency's Tax Operations states that the Swedish Customs Authority has direct access to certain data in the Swedish Tax Agency's tax database. This applies, *inter alia*, to data regarding the identity of persons, registration for taxes and fees and decisions, payments, accounting and other measures in cases where the data concerns persons who are or who can be assumed to be subject to the Swedish

Unofficial translation

Customs Authority's inspection operations under the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties. Section 2 of the Regulation (2001:588) on Data Processing in the Swedish Tax Agency's Tax Operations also states that, *inter alia*, data on the movements of those goods referred to in the Act (1994:1563) on Tobacco Excise Duty may also be processed in the tax database. Section 5 of the said Regulation also contains certain provisions on the disclosure, on request, of data from the tax database to the Swedish Customs Authority as well as in event of direct access. Taken together, the regulations currently in place are considered sufficient to give the Swedish Customs Authority the possibility to access the data it needs for an effective inspection.

Certain consequential amendments

Chapter 3 Section 4 of the Act (1994:1551) on Freedom from Taxation upon Import, etc. currently contains regulations on the possibility of tax-free imports in certain cases. If the conditions of the Act are met, a traveller may bring 200 cigarettes, 100 cigarillos, 50 cigars or 250 grams of smoking tobacco, or a proportionate mix of these tobacco products, in with them. In order to clarify what applies when dealing with other forms of tobacco, the same definition of tobacco products as in the Act on Tobacco Excise Duty should be introduced into the act A reference should also be made to the definition of other forms of tobacco in Section 35(a) of the Act on Tobacco Excise Duty.

In this context, as the regulations on tax exemption for travellers in Chapter 3 of the Act on Freedom from Taxation upon Import are largely based on EU regulations that primarily affect harmonized tobacco products, it is considered appropriate for other forms of tobacco to be handled in the same way as snus and chewing tobacco. Chapter 4 Section 3 of the same act contains standard flat rates for customs and excise duty that can be used in certain cases. It is proposed that other forms of tobacco is added to the list and that the amounts should be set at SEK 428/kg for customs duty and SEK 2,422/kg for excise duty. The amounts thus correspond to those that apply for smoking tobacco.

The Act (1999:445) on Export Shops contains regulations on the sale of untaxed Union goods to air passengers travelling to a location outside the EU's tax territory. In order for other forms of tobacco to be treated as similarly to smoking tobacco as possible, it is also proposed in this regard to add other forms of tobacco to the list in Section 4, and at the same quantity as smoking tobacco (250 grams). It is also proposed that such sales can only take place if the sale is conducted by an approved stock keeper, which corresponds to what applies for other tobacco.

Legislative proposal

The proposal gives rise to the introduction of new Chapter 3 Sections 2 and 3 of the Act on Freedom from Taxation upon Import, etc. and amendments to Chapter 3 Sections 4 and 7 and Chapter 4 Section 3 of the Act on Freedom from Taxation upon Import, etc., Sections 4 and 5 of the Act on Export Shops, Chapter 12 Section 2 of the Act on Data Processing in the Swedish Tax Agency's Tax Operations as well as Chapter 7 Section 1 and Chapter 41 Section 3 of the Tax Procedures Act.

3.8 Entry into force and transitional provisions

<p>The proposal in the memorandum: The provisions regarding approved stock keepers and registered distance sellers of chewing tobacco and other forms of tobacco will enter into force on 01 June 2021. The same applies to the proposal for supplements to the Tax Procedures Act. Other</p>
--

amendments will enter into force on 01 July 2021. The provisions on notification and pledging security for certain movement and the amendments in the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties shall apply for the first time to movements of snus, chewing tobacco and other forms of tobacco which start after the date of entry into force. With regard to the Act on Freedom from Taxation upon Import, etc. and the Act on Export Shops, older provisions will continue to apply to circumstances relating to the time before the date of entry into force.

Reasons for the proposal: The proposed measures entail the introduction of a liability to pay excise duty for new goods. New operators may, therefore, wish to apply for approval as a stock keeper. Given this, the changes in the provisions regarding approval as stock keepers should enter into force before other provisions to facilitate the Swedish Tax Agency's implementation of the legislative changes. The same should apply to the provisions regarding registered distance sellers of chewing tobacco and other forms of tobacco. The provisions regarding stock keepers and registered distance sellers are therefore proposed to enter into force on 01 June 2021. Given this, it is also appropriate to allow the proposal for associated supplements to the Tax Procedures Act to enter into force on 01 June 2021. It is proposed that other amendments, both in the Act on Tobacco Excise Duty and in other acts, enter into force on 01 July 2021. Upon entry into force, there will be stock keepers approved to handle snus or chewing tobacco in all of the ways listed in the Act. Approval as a stock keeper under the Act on Tobacco Excise Duty does not, however, refer to a specific product. These approved stock keepers will, after the date of entry into force, also be counted as stock keepers for other forms of tobacco. No specific transitional provisions are required.

However, through the proposed Section 38(e) of the Act on Tobacco Excise Duty, obligations to notify and pledge security for payment of the excise duty when snus and chewing tobacco are imported from another EU member state are also introduced; also see Section 3.6. These obligations must be fulfilled before a movement is commenced and should therefore be applied for the first time to movements of snus, chewing tobacco and other forms of tobacco which begin after the date of entry into force. The same should apply to the new provisions in the Act on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties.

The changes to the Act on Freedom from Taxation upon Import, etc. and the Act on Export Shops may affect which volumes of other tobacco products may be imported or sold tax-free. These acts therefore require transitional provisions to the effect that older provisions will continue to apply to circumstances relating to the time before the date of entry into force.

4 Impact assessment

This Section outlines the effects of the proposal to the extent considered necessary for the legislative matter in question and with regard to the Regulation (2007:1244) on Impact Assessments in Connection with Law Making. The impacts on public finances as a result of changes to rules on excise duty and fees are determined in accordance with the Swedish Ministry of Finance's calculation methods. The calculations are made using the prices and volumes of the year of entry into force.

4.1 Aim and alternative solutions

The aim of the proposal is to reduce the problems that the demarcation and differences between excisable smoking tobacco and non-excisable tobacco, here called other forms of tobacco, entail and to counter the fraud that is sometimes associated with the handling of non-excisable tobacco. A tax on other forms of tobacco, similar to that on smoking tobacco, would mean that the incentives that exist for market operators to either try to evade tax by “misclassifying” their tobacco products or to use tax-exempt tobacco in the manufacture of excisable tobacco products disappears. In addition, the introduction of opportunities for tax deductions during commercial manufacture of, for example, snus, eliminates the risks of double taxation that some snus manufacturers claim exist.

If no further action is taken and no tax therefore imposed and no opportunities for deduction introduced for commercial snus manufacturers, this would mean no change to the current situation. Although there are signs that the consumption of other forms of tobacco has already decreased due to the authorities’ interpretation of the regulations (see Impacts on public finances below), the demarcation problems mentioned above will remain. The incentives for tax evasion that the existence of other forms of non-excisable tobacco provide will remain.

An alternative to taxation is to introduce a form of licence for the handling of other forms of tobacco. In Section 3.1, it was concluded that such a measure would be very radical and nor would it help solve the primarily fiscal problems the presence of other forms of tobacco currently cause. Another option would be to introduce an opportunity for a tax deduction that was only available to legal snus producers. However, this would not solve the problems with the demarcation between smoking tobacco and other forms of tobacco or the presence of non-excisable tobacco. A third option would be to differentiate the tax rate on other forms of tobacco. With regard to the fact that other forms of tobacco are often used as input material in the manufacture of both harmonized tobacco products such as cigarettes and non-harmonized tobacco products such as snus, it may be reasonable to compare with the excise duty on smoking tobacco. In making such an assumption, one could argue that the amount of other forms of tobacco handled does not correspond to the amount of smoking tobacco resulting from the manufacture. For that reason, it can be argued that the tax rate on other forms of tobacco really should be lower than that for smoking tobacco. However, for practical reasons, the same tax rate should be applied to both smoking tobacco and other forms of tobacco. Also see section 3.3 above. Moreover, the aim of a tax on other forms of tobacco is primarily to neutralise the problems that arise today because of the demarcation and the difference in excise duty between smoking tobacco and other forms of tobacco.

Section 3.6 of the memorandum also presents some proposals aimed at improving conditions for the authorities to be able to check that excise duty is being paid for snus, chewing tobacco and other forms of tobacco. The proposals also aim to make the provisions for snus, chewing tobacco and other forms of tobacco more like those that apply to harmonized tobacco products. If no action is taken, the difficulties that currently exist in checking that excise duty is being paid are expected to remain.

4.2 Impacts on public finances

Calculation of the impact on public finances of the imposition of an excise duty on other forms of tobacco requires the consumption of other forms of tobacco to be quantified. As other forms of tobacco are not excisable at the present time, no official statistics on consumption are available. In addition to other forms of tobacco, the impact on public finances is also affected by the issue of smoking tobacco (which should legally be taxed) being claimed to be other forms of tobacco. This may be due either to the tobacco being deliberately misclassified to avoid excise duty or to a mistake being made as to whether the tobacco is smoking tobacco or other forms of tobacco. Today, the difference between the two assessments means whether or not excise duty shall be paid. However, under the proposal, the same excise duty will be paid regardless of whether the tobacco is assessed to be smoking tobacco or other forms of tobacco. Therefore, in order to calculate the impact on public finances, the amount of smoking tobacco consumed which is stated to be other forms of tobacco, and for which no excise duty has therefore been paid, also needs to be quantified. An overall, very uncertain, assessment is that consumption of other forms of tobacco and smoking tobacco for which excise duty has not been paid, amounts in total to about 50 tonnes per year.

This assessment is partly based on a ruling from June 2018 in a case heard at the Administrative Court of Appeal in Stockholm between the Swedish Customs Authority and a company called Prillan Concept AB. The judgement was confirmed on 16 December 2019 by the Supreme Administrative Court. The company's products made from tobacco waste were ruled to be smokable tobacco and not other forms of tobacco. The company was obliged to pay a tax debt of SEK 100 million, which corresponded to around 50 tonnes of smoking tobacco. Although it has now been established that the tobacco is smoking tobacco, the company considered that it was other forms of tobacco and would not be taxed. The case is therefore of interest as a guide to quantify the consumption of smoking tobacco which the taxpayer has deemed to be other forms of tobacco and for which excise duty has therefore not been paid. The Administrative Court of Appeal's judgement created some uncertainty in the market as regards what was considered to be other forms of tobacco and was considered to be smoking tobacco. Many operators have therefore stopped selling other forms of tobacco. The Supreme Administrative Court has now upheld the Administrative Court of Appeal's ruling and the same uncertainty no longer exists. The clearer legal situation should mean that fewer operators make incorrect judgements regarding whether tobacco is smoking tobacco or other forms of tobacco.

In addition, KPMG publishes an annual report on behalf of the Swedish Tobacco Suppliers' Association as regards the quantity of unregistered tobacco. Sales of "raw tobacco for smoking" are estimated to have fallen from between 300-400 tonnes in 2017 to between 100-160 tonnes in 2018. It should be noted that KPMG only quantify consumption of raw tobacco for smoking and not to manufacture snus. However, the figures should be viewed with caution as the investigation was not independent but rather figures presented by the tobacco industry.

These volumes can be compared to the taxed consumption of smoking tobacco (roll-your-own tobacco and pipe tobacco) which in 2018 amounted to 92 tonnes. They can also be compared to the total sales of cigarettes. Assuming that 1 gram of other forms of tobacco is consumed per rolled cigarette, this means that the consumption of other forms of tobacco amounted to around 6-7 percent of total cigarette sales in 2017 and to around 2-3 per cent of total cigarette sales in 2018.

Unofficial translation

It is difficult to estimate the effects of the introduction of an excise duty on tobacco that is not currently excisable. This is mainly because there are no public statistics on the consumption of such tobacco, but also because substitution between other forms of tobacco, other types of tobacco and unregistered tobacco is uncertain. Unregistered tobacco means tobacco that is either imported by travellers or smuggled (hereafter referred to solely as unregistered tobacco). The information available on the effects of introducing an excise duty on other forms of tobacco in those EU member states that have done so is that the resulting tax revenues are modest.

By introducing an excise duty on other forms of tobacco at SEK 1,957 per kilogram and a price rise of about 900 per cent, there is a significant likelihood that the consumption of other forms of tobacco will be substituted for consumption of other types of tobacco and unregistered tobacco or that consumers reduce their consumption. Consumers who engage in artisanal production of home-made cigarettes and snus are not considered to be as price sensitive and therefore do not have the same incentive to change their consumption. Thus, of the consumption of the 50 tonnes per year quantified above, it is estimated that 5 percent will switch to consumption of excisable other forms of tobacco due to artisanal home-made production, while 50 per cent will switch to consumption of other excisable types of tobacco. The remaining consumption is either expected to cease or switch to unregistered consumption.

The 5 percent of consumption that remains in the form of consumption of excisable other forms of tobacco means a permanent increased tax revenue of SEK 5.42 million. Tobacco excise duty revenues from other types of tobacco are expected to permanently increase by SEK 34.94 million as a result of 50 percent of the consumption being substituted for other types of tobacco. This calculation is based on snus constituting half of the types of tobacco which consumption switches to, with smoking tobacco or cigarettes constituting the other half. Upon introduction of the excise duty on 01 July 2021, the estimated total impact on public finances of the introduction of an excise duty on other forms of tobacco will be a net revenue of SEK 19.72 million in 2021 and SEK 34.94 million permanently.

The memorandum also presents some proposals aimed at improving the conditions under which the authorities are able to check that excise duty is paid for snus, chewing tobacco and other forms of tobacco, such as certain requirements for notification to the Swedish Tax Agency and pledging security in connection with the movement of such products; see Section 3.6. Equivalent or similar regulations exist in the harmonized tobacco tax area. The assessment is that very few movements and operators will be affected by these regulations and that public finances will therefore not be impacted by them.

Table 1. Impact on public finances of introducing an excise duty on other forms of tobacco

SEK million, fixed prices

		Gross impact	Net impact			Lasting impact
		2021	2021	2022	2023	
Impact on Public Finances	01/07/2021	15.78	19.72	34.94	34.94	34.94

4.3 Impacts on prices

Introducing an excise duty on other forms of tobacco at a rate of SEK 1,957 per kilogram, equivalent to tobacco excise duty on smoking tobacco, will increase the price of other forms of tobacco by around 900 percent. A 0.5 to 1 kilogram packet of other forms of tobacco typically sells at a price of about SEK 200–300 per kilogram. Smoking tobacco is sold in smaller packets of around 40–50 grams for a price of around SEK 2,000–3,000 per kilogram. Under the proposed excise duty, the price of other forms of tobacco will amount to around 85 percent of the price of smoking tobacco while the excise duty on a home-made cigarette and a cigarette bought in a shop will be roughly the same. However, in the case of home-made snus, the excise duty on a home-made portion will be SEK 1.7 while the excise duty on a portion from a shop will be SEK 0.41. This impact can be partially avoided by continuing to buy tobacco for craft production of, for example, snus as plants or seeds.

4.4 Impacts on public health

Tobacco consumption tends to fall as the price of tobacco products rises. Hence, a positive impact on public health can be expected. Public health is also affected by the type of tobacco consumed. As regards the proposed excise duty on other forms of tobacco, it is difficult to judge how consumption of the various types of tobacco will change. Public health may be affected both positively and negatively, depending on whether consumption switches to a form of tobacco that is better for public health (or vice versa). In conclusion, the overall impact on public health is therefore difficult to judge.

4.5 Consequences for companies

Following the Administrative Court of Appeal’s judgement from June 2018 in a case between the Swedish Customs Authority and a company called Prillan Concept AB, in which the company’s products made from tobacco waste were ruled to be smokable tobacco and not non-excisable tobacco, there has been a period of uncertainty in the market as regards what is considered to be other forms of tobacco and what is considered to be smoking tobacco (see Section 2.1 above regarding the judgement being subsequently upheld in the Supreme Administrative Court). This uncertainty may be one explanation for why the consumption of other forms of tobacco dropped appreciably between 2017 and 2018. By introducing an excise duty on other forms of tobacco that corresponds to the

Unofficial translation

excise duty on smoking tobacco, the economic impact of this uncertainty will be appreciably reduced, as the excise duty will be the same regardless of whether the tobacco is considered to be smoking tobacco or other forms of tobacco.

Other forms of tobacco are sold both through online stores and local tobacco retailers. The introduction of an excise duty will increase the administrative burden. Persons who are registered for excise duty, i.e. approved stock keepers and registered distance sellers, are required to submit an excise duty return for each accounting period even if there is no excise duty to report. Persons who are not approved as stock keepers or registered distance sellers are required to report excise duty on every occasion a liability to pay excise duty is triggered. However, the administrative costs can be passed on in the price of the product. When a new excise duty is introduced, administrative costs are generally greatest during the first year and then drop the following year. The vast majority of operators who will become excisable for the proposed excise duty on other forms of tobacco are already considered to be paying tobacco excise duty on other tobacco products at the present time. This means that they already have established procedures for handling and paying excise duty, which should make payment of excise duty on another tobacco product easier. The increased administrative burden should therefore be relatively low. However, there is not enough raw data, e.g. in the form of statistics, to be able to quantify the administrative burden of the proposal. No estimate of the size of the burden has therefore been attempted.

The provisions proposed in Section 3.6 and which aim at improving the conditions under which the authorities are able to check that excise duty is paid for snus, chewing tobacco and other forms of tobacco are expected to include few operators and a limited number of goods movements. In the event a person conducts more extensive business operations, he or she may instead choose to apply for approval as a stock keeper or registered distance seller. The increased administrative burden is also expected to be relatively low and can also be considered to be somewhat lower than that applicable in the harmonized tobacco excise duty area, as no requirements have been imposed regarding tax representatives during distance selling or accompanying documents in event of further imports from other EU member states. However, there is not enough raw data to be able to quantify the administrative burden of this proposal. No estimate of the size of the burden has therefore been attempted.

As far as possible, tax regulations should be general and affect small and large companies in the same way. In some cases, simplifications promoting enterprises may be considered, but there is no need for special regulation in this case. Moreover, a separate regulation would be expected to counteract the aim of the proposals.

4.6 Consequences for authorities and the general administrative courts

The Swedish Tax Agency is proposed to be the taxing authority in all cases except where the taxpayers are not approved stock keepers and import excisable goods into Sweden from third countries. The Swedish Customs Authority is proposed to be the taxing authority in these cases. The introduction of the new excise duty means increased workload for both the Swedish Tax Agency and the Swedish Customs Authority. The Swedish Tax Agency will incur costs for, *inter alia*, information initiatives and checking compliance with the new regulations.

An excise duty on other forms of tobacco does not in itself obviate the previous uncertainties surrounding assessment of what other forms of tobacco and smoking tobacco are, respectively. However, the excise duty does reduce the impact of attributing a product to other forms of tobacco

Unofficial translation

rather than to smoking tobacco. Given that the Supreme Administrative Court has now clarified the legal situation in Sweden, the ambiguities surrounding the assessment should also have diminished. Taken together, the clarified legal situation and the sharply reduced financial incentives for operators to consciously try to assign smoking tobacco to the category of other forms of tobacco should mean that the workload for the Swedish Tax Agency and the Swedish Customs Authority surrounding assessment of what other forms of tobacco and smoking tobacco, respectively, are will sharply diminish. If unregistered consumption increases following the introduction of an excise duty on tobacco that was not previously excisable, this could lead to a further increase in workload for the Swedish Tax Agency and the Swedish Customs Authority. However, in this connection, both the Swedish Tax Agency and the Swedish Customs Authority already have established procedures and structures that should facilitate the increased workload.

The proposals presented in Section 3.6 and which aim at improving the conditions under which the authorities are able to check that excise duty is paid for snus, chewing tobacco and other forms of tobacco mean that the Swedish Tax Agency is given certain additional duties for handling reports, security and approvals. As certain movements of snus, chewing tobacco and other forms of tobacco are proposed to be subject to the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties, the Swedish Customs Authority's monitoring operations under that act will be expanded to cover new goods. However, the expectation is that few operators and few movements will be subject to the new provisions.

Taken together, the assessment is made that additional costs for the Swedish Tax Agency and the Swedish Customs Authority as a result of the proposals are expected to be marginal, and they will therefore need to be accommodated within existing financial frameworks.

The proposal adds new decisions that can be appealed in general administrative courts. However, as it is difficult at present to estimate what proportion of decisions will be appealed, this means it is also difficult to estimate the costs of dealing with the appeals. Since the types of product in question are clearly defined and subject to a liability to pay excise duty and other obligations and the structure of the provisions are consistent with other excise duty legislation, the provisions are expected to be easy to apply for both taxing authorities and taxpayers. Then again, the proposal may mean fewer cases as regards whether a particular tobacco should be taxed as smoking tobacco or other forms of tobacco. The reason is that the proposed excise duty on other forms of tobacco largely eliminates the financial impacts that arise at present if a product is attributed to smoking tobacco instead of other forms of tobacco. By proposing that the same tax rate shall apply to these two categories, it can be assumed that taxpayers will be less inclined to appeal against the taxing authority's decisions. Therefore, the overall expectation is that the provisions will only have a limited impact on the influx of cases to the general administrative courts.

Any additional expenses for the courts will thus be dealt with within existing financial frameworks.

4.7 Other impacts

There is insufficient raw data to assess any distributional impacts of the proposal. However, it can be noted that the costs to a daily smoker who smokes around 11 cigarettes per day will increase by about SEK 7,800 per year as a result of the proposal, if he or she continues to make his or her own cigarettes from other forms of tobacco or switches to consuming smoking tobacco or cigarettes. The cost increase will be less to the extent that the daily smoker switches to snus or reduces his or her consumption.

Unofficial translation

The Swedish Council for Information on Alcohol and Other Drugs (CAN) conducts an annual survey of tobacco habits in Sweden. The latest report shows that in 2018, 33% of men had used tobacco in the past month compared to 18% of women. CAN does not record tobacco habits for other forms of tobacco, but if the gender distribution is the same as for other types of tobacco, the proposal can be found to affect men to a greater extent than women. Taken together, the proposal is expected to have a limited impact on financial equality. The proposal is not expected to have any impacts on employment, the environment, integration or municipal self-government.

4.8 The proposal's compatibility with EU law

The proposal is considered to be compatible with EU law. Other forms of tobacco are not included under any EU regulation on taxation. Member states are therefore able to introduce and formulate regulations for an excise duty on other forms of tobacco, provided, in trade between member states, such regulations do not give rise to formalities connected with the crossing of frontiers. In addition, the requirements imposed must not affect freedom of movement and must comply with the general principles of Union law on proportionality and equal treatment. The proposed excise duty is considered to meet these requirements. The excise duty will not give rise to formalities connected with the crossing of frontiers. The opportunities for checks that are proposed for the Swedish Customs Authority are linked to the actual movement of a product and not to the fact that the product crosses a Swedish frontier. The formalities proposed in connection with the movement of a tobacco product are related to the acquisition of the product and not to the crossing of the frontier itself. Finally, the proposed measures correspond to the obligations laid down in the Excise Duty Directive for harmonized tobacco products. With regard to compliance with the EU's Data Protection Regulation, see Section 3.7. The design of the excise duty is also deemed to otherwise comply with the requirements of EU law.

4.9 Entry into force and information initiatives

It is proposed that the amendments in the proposal enter into force on 01 June 2021 as regards the provisions in the Act on Tobacco Excise Duty that concern approved stock keepers and registered distance sellers of chewing tobacco and other forms of tobacco as well as supplements to the Tax Procedures Act. Other amendments will enter into force on 01 July 2021. The proposal also contains transitional provisions (see Section 4.8 above). The date of entry into force has been chosen in view of the time that may be needed for adaptation and preparations by concerned parties such as the Swedish Tax Agency, the Swedish Customs Authority and any relevant companies from the time when the Swedish Parliament comes to a decision on the proposal. Both administrative procedures and different information systems may need to be adapted to the new regulations. Where in some cases there are new regulations for new operators, it is assumed that there is a need for the relevant authorities to carry out specific information initiatives (see Section 4.6). Such initiatives can be made, for example, through targeted campaigns and by updating existing, and possibly developing new, guidance from the respective authorities.

5 Consequential amendments due to the introduction of an opportunity to obtain a refund in connection with recycling at landfills

5.1 Background and applicable law

Under the Act (1999:673) on Waste Excise Duty, waste excise duty must be paid for waste that is brought into a waste management facility where hazardous waste or other waste in a quantity of more than 50 tonnes per year is finally stored (landfilled) or stored for a period longer than three years. Waste excise duty must also be paid for the waste that arises within a plant that primarily operates a business other than waste management if hazardous waste or other waste in a quantity of more than 50 tonnes per year is landfilled within the plant or stored there for longer than three years.

The waste excise duty is levied according to a so-called net landfill method. This means that excise duty is collected for basically all waste that is brought into a waste management facility. For waste generated at an industrial plant, the liability to pay excise duty becomes chargeable when the waste is generated. An exemption from excise duty liability exists for certain processing methods and waste types. Provisions regarding reporting of waste excise duty and other procedural issues can be found in the Tax Procedures Act.

Government Bill “Some Amendments to the Act on Waste Excise Duty” proposes, *inter alia*, that a provision should be introduced to allow a refund to be issued for previously paid excise duty on waste from a facility that is returned to circulation and is no longer excisable under the Act on Waste Excise Duty. The current legislation means that if waste from a facility is returned to circulation and is no longer excisable, there is no possibility to obtain a refund for excise duty that was previously paid. This means that waste recycling at such landfills is disadvantageous compared to waste recycling at facilities that are still excisable, as, in the latter cases, deductions can be made for waste from a facility that is returned to circulation. The bill proposes that an opportunity to obtain a refund is introduced for waste recycling facilities that are no longer excisable. The opportunity to obtain a refund needs to be introduced so that the absence of such an opportunity is not an unnecessary obstacle to waste recycling at landfills.

The bill does not propose any changes to the Tax Procedures Act that will allow the Swedish Tax Agency to issue orders or order an audit to check the refunds.

5.2 Consequential amendments to the Tax Procedures Act

The proposal in the memorandum: The Swedish Tax Agency shall be given the opportunity to issue orders to check that true and complete information has been provided in an application for a refund of excise duty on waste. The Swedish Tax Agency shall also be given the opportunity to order an audit. The amendments enter into force on 01 January 2021.

Reasons for the proposal: When the proposal in the bill “Some Amendments to the Act on Waste Excise Duty” regarding the opportunity for a refund under Section 12 of the Act on Waste Excise Duty enters into force, some consequential amendments will need to be made in order for the Swedish

Unofficial translation

Tax Agency to have the same opportunities to check that the rules on refund of excise duty on waste are being followed as for other parts of the waste tax.

The Swedish Tax Agency should therefore be given the opportunity to order the person who has been granted a refund of excise duty on waste to submit the information that the Agency needs to be able to verify that the person has submitted true and complete information in his or her application for a refund of excise duty on waste. The Swedish Tax Agency shall also be given the opportunity to order a person who is accountable or who is a different legal person than an estate of a deceased person, to submit information about a legal transaction relating to a situation that is important for verifying that true and complete information has been provided in an application for a refund of excise duty on waste. Finally, the Swedish Tax Agency should also be given the opportunity to order an audit to verify that the applicant for a refund of excise duty on waste has provided true and complete information. The proposed amendments give the Swedish Tax Agency the same opportunities to check refunds that are made under the Act on Waste Excise Duty as for other excise duty refunds.

It is appropriate that the amendments enter into force at the same time as the amendments proposed in the bill “Some Amendments to the Act on Waste Excise Duty”, i.e. 01 January 2021.

Legislative proposal

The proposal will lead to changes in Chapter 37 Sections 7(a) and 9(a) of the Tax Procedures Act.

5.3 Impact assessment

This Section outlines the effects of the proposal to the extent necessary in the legislative matter in question and with regard to those aspects to be highlighted in accordance with Sections 6 and 7 of the Regulation (2007:1244) on Impact Assessments in Connection with Law Making. This is done on the basis of the information available and to the extent possible.

5.3.1 Aim and alternative solutions

The aim of the proposed amendment to the Tax Procedures Act is to give the Swedish Tax Agency the same opportunity to check that the regulations for refund proposed in the bill “Some Amendments to the Act on Waste Excise Duty” are followed in the same way as for the refund of other excise duties. In the event these changes are not introduced, the Swedish Tax Agency would not be able to order a business or impose an audit to check that refunds were being handled correctly.

The consequences of the proposal to introduce a possibility to obtain a refund for previously paid excise duty on waste from a facility that is returned to circulation and is no longer excisable under the Act on Waste Excise Duty are analysed and described in the bill “Some Amendments to the Act on Waste Excise Duty”. This impact assessment therefore only describes the effects of the proposed amendment to the Tax Procedures Act.

5.3.2 Impacts on public finances

The proposal is not expected to have any impact on public finances.

5.3.3 Impacts on companies

The proposal means that companies requesting a refund of excise duty previously paid for waste from a facility that is returned to circulation and is no longer excisable under the Act on Waste Excise Duty can be checked by the Swedish Tax Agency. It is not possible to estimate how many companies may be affected as it depends on how the profitability of recycling at landfills for this type of facility develops (in all likelihood, only a small number of companies will be affected). A person requesting a refund must also be able to substantiate that the waste for which a refund is being sought has been received at an excisable waste management facility or at a place where the waste is intended to be incinerated or processed for recycling. The condition regarding a particular reception location is directly linked to the purpose of the provisions for refund and is intended to facilitate companies proving their right to a refund. Presenting this documentation during an audit by the Swedish Tax Agency should not be a particularly labour intensive task. If waste is taken to a waste management facility operated by someone other than the one who leaves the waste there, such waste disposal is associated with a reception cost. The company already has the associated documentation, e.g. in the form of invoices and weighing receipts, which can be used as a basis for an application for the excise duty refund. If the waste is instead transferred to a separate waste management facility, excise duty must be reported when the waste is brought into the plant. Documents from this tax return, which follows from the obligations under the Tax Procedures Act, can then also form the basis for the application for an excise duty refund.

Even when the waste is received at other locations, the waste disposal should, in most cases, be associated with a financial transaction between the waste disposer and waste recipient. The documentation of the transaction, e.g. invoices and weighing receipts, can then form part of the documentation to demonstrate the right to a refund.

As documentation is already available, the proposed amendment to the Tax Procedures Act is not expected to result in any major administrative costs for the companies concerned.

5.3.4 Impacts on the environment

The proposed amendment to the Tax Procedures Act is purely administrative and is not expected to have any impact on the environment.

5.3.5 Impacts on public authorities and courts

The proposal means that the Swedish Tax Agency is given the opportunity to issue an order to check that true and complete information has been provided in an application for a refund of excise duty on waste and to be allowed to order an audit to verify this. Any additional costs for the Swedish Tax Agency are deemed to be manageable within existing financial frameworks. The proposal is not expected to affect the number of cases or otherwise affect the workload in the general administrative courts, and nor will other authorities incur any increased costs.

5.3.6 Other impacts

The proposal is not expected to have any employment effects or effects on gender equality and is considered to be compatible with EU law.

6 Commentary to the proposed legislation

6.1 The proposal regarding an act to amend the Act (1994:1563) on Tobacco Excise Duty

Section 1

This Section regulates the scope of the Act. The *third paragraph* is supplemented with information that excise duty shall also be paid for other forms of tobacco.

The new *fourth paragraph* specifies the meaning of the term tobacco product in the Act. The term includes, firstly, the harmonized goods cigarettes, cigars, cigarillos and smoking tobacco and, secondly, the non-harmonized goods snus, chewing tobacco and other forms of tobacco. It should be noted that the term tobacco product may have a somewhat different meaning in other statutes outside tax law. When the term is used in the Act (2018:2088) on Tobacco and Related Products, it has the meaning that follows from Article 2(4) of Directive 2014/40/EU of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (the Tobacco Products Directive).

The current *fourth* and *fifth paragraphs* have been combined, whereby the current number of paragraphs in the Section is maintained. These paragraphs contain definitions related to EU law.

The amendments are prompted by the proposals in Section 3.2.

Section 2

The *first paragraph* of the Section specifies the excise duty on cigarettes. The excise duty comprises, firstly, an amount per item and, secondly, a value-based amount which is currently one percent of the retail price. The amount per item has been changed so that the excise duty rate for 2020 of 1 SEK and 60 öre per item is now listed.

The *third paragraph* states that the per item excise duty rate shall be recalculated in accordance with the provisions of Section 42. When the new excise duty on other forms of tobacco was introduced, the base year for all types of tobacco subject to the Act was also coordinated. This means moving the base year forward from the current 2016 to 2020.

The amendments are prompted by the proposals in Section 3.3.

Section 8

The *first paragraph* of the Section specifies the excise duty on cigars and cigarillos as well as smoking tobacco. The amount per item has been changed so that the excise duty rates for 2020 of 1 SEK and 41 öre per item and SEK 1,957 per kg, respectively, are now listed.

The *second paragraph* states that the amount of excise duty shall be recalculated in accordance with the provisions of Section 42. When the new excise duty on other forms of tobacco was introduced in the Act, the base year for all types of tobacco subject to the Act was also coordinated. This means moving the base year forward from the current 2016 to 2020.

Unofficial translation

The amendments are prompted by the proposals in Section 3.3.

Section 21

This Section contains provisions regarding an exemption from the liability to pay excise duty when goods are recycled during manufacture as well as for goods exclusively used for testing the quality of the goods in the tax warehouse.

In the *first paragraph*, the words “of excisable tobacco products” have been added in order to make it clear that the manufacturing can refer to both harmonized tobacco products and national tobacco products including other forms of tobacco. It therefore does not matter whether the warehouse keeper manufactures goods that can be stored in the tax warehouse or not. If a warehouse keeper has smoking tobacco in his or her tax warehouse and uses it to manufacture cigarettes, the liability to pay excise duty would normally arise in accordance with Section 20(1)(c), since the smoking tobacco is utilised in the tax warehouse. However, due to the exemption in Section 21, a liability to pay excise duty does not arise at that point. The cigarettes will instead be taxed if they are taken out of the tax warehouse or if any of the other conditions in Section 20(1) are met. In exactly the same manner, if the warehouse keeper instead uses the smoking tobacco to manufacture snus, a liability to pay excise duty does not arise because the smoking tobacco has been utilised. On the contrary, the manufacture of the snus will be taxed in accordance with Section 36(2) if the warehouse keeper is not also an approved stock keeper. This is because snus is not subject to the regulations for tax warehouses. If the warehouse keeper is an approved stock keeper, the manufacture itself will not be taxed, but rather the taxation will take place at a later date.

The amendments are prompted by the proposals in Section 3.5.

Section 33

This Section is new and regulates a warehouse keeper’s right to make deductions when manufacturing tobacco products. The provision means that a warehouse keeper can deduct an amount equal to the excise duty on the snus, chewing tobacco or other forms of tobacco which the warehouse keeper has recycled during the manufacture of cigarettes, cigars, cigarillos or smoking tobacco. Double taxation is thereby avoided during such manufacturing. The warehouse keeper is not liable to pay excise duty for snus, chewing tobacco and other forms of tobacco and therefore cannot make a deduction for excise duty on such goods. The provision has therefore been designed to allow them to deduct an amount equal to the excise duty on the snus, chewing tobacco or other forms of tobacco.

The amendments are prompted by the proposals in Section 3.5.

Section 35

This Section specifies the amount of excise duty for snus and chewing tobacco as well as a rule for recalculation. A change has been made to the excise duty amounts in the *first paragraph* so that they now list the excise duty rates for 2020.

The *second paragraph* states that the amount of excise duty shall be recalculated in accordance with the provisions of Section 42. When excise duty on other forms of tobacco was introduced in the Act, the base year for all types of tobacco subject to the Act was also coordinated. This entails moving the base year forward from the current 2016 to 2020.

The amendments are prompted by the proposals in Section 3.3.

Unofficial translation

Section 35(a)

This Section is new. The excise duty rates for other forms of tobacco are specified in the *first paragraph*. The *second paragraph* gives a definition of other forms of tobacco. The amendments are prompted by the proposals in Section 3.2.

The *third paragraph* states that the amount of excise duty shall be recalculated in accordance with the provisions of Section 42. The amendments are prompted by the proposals in Section 3.3.

Section 36

This Section regulates the liability to pay excise duty.

A change has been made to *points 2–4* by the addition of the words “other forms of tobacco”.

A new *point 5* has been introduced to the effect that persons who sell snus, chewing tobacco or other forms of tobacco in Sweden through distance selling in accordance with the new provisions in Sections 38(b) or 38(c) are liable to pay excise duty.

The new *point 6* specifies the liability to pay excise duty for persons who receive snus, chewing tobacco or other forms of tobacco in accordance with the new Section 38(d).

The new *point 7* regulates the liability to pay excise duty for persons who, in other cases than in the previous points of the Section, are in commercial possession of snus, chewing tobacco or other forms of tobacco without excise duty having been declared here. The liability to pay excise duty under the point presumes that the goods are not owned by a stock keeper, as goods owned by stock keepers are excisable under point 1. Taxed goods which, following import into Sweden, are owned by a stock keeper are not subject to the provision. On the contrary, the provision mainly covers goods that have not previously been taxed. Examples of when the provision may be applicable are, e.g., for goods smuggled in from third countries. It could also apply to taxed goods imported from another EU member state and found here in the possession of someone other than the person who imported or received the goods under such circumstances that excise duty relating to the goods shall be paid here. In this context, it should be noted that if, in a declaration to the Swedish Tax Agency, a person who is liable to pay excise duty under any of the points 1–6, submits accounts of the excise duty on the goods in question after taxation of the person in possession under point 7, the former should be taxed instead. In such case, it is incumbent on the Swedish Tax Agency under Chapter 66 Section 18 of the Tax Procedures Act (2011:1244) to re-examine and set aside the taxation relating to the person who has been taxed in accordance with point 7. Goods shall only be subject to Swedish tobacco excise duty once.

The amendments are prompted by the proposals in Sections 3.4 and 3.6.

Section 37

This Section regulates the excisability of snus or chewing tobacco upon import from a third country. Adding the words “other forms of tobacco” to the first paragraph means that the provisions on excisability upon import from a third country also apply to this category of tobacco.

The amendments are prompted by the proposals in Section 3.4.

Unofficial translation

Section 38

This Section regulates who is able to be approved as stock keeper. The words “other forms of tobacco” have been added to *points 1–4*.

The amendments are prompted by the proposals in Section 3.4.

Section 38(b)

The Section introduces new provisions on distance selling of snus, chewing tobacco and other forms of tobacco. The *first paragraph* of the provision is based on the existing provision on distance selling in respect of harmonized goods in Section 16. To make clear that the new Section does not include harmonized goods, the provision uses the words “distance selling of snus, chewing tobacco and other forms of tobacco”. The provision does not apply to sales to traders. If a trader who is a stock keeper buys snus, chewing tobacco and other forms of tobacco from another EU member state, the rules in Section 36(1) apply. If the trader is not a stock keeper, the third point of the same section applies instead.

Under the provisions in the *second paragraph*, a seller engaged in or intending to engage in distance selling of snus, chewing tobacco and other forms of tobacco must notify the Swedish Tax Agency to this effect and pledge security for the excise duty on the goods. The security pledged by such a distance seller only refers to the relevant goods movement and shall therefore correspond to the excise duty on the goods to be moved. With regard to chewing tobacco and other forms of tobacco, the provision in the second paragraph only includes persons who are not approved as a registered distance seller of chewing tobacco and other forms of tobacco in accordance with Section 38(c). However, with regard to distance selling of snus, this provision always applies as it is not possible to obtain approval under Section 38(c). Thus, even if an operator is approved as registered distance seller of chewing tobacco and other forms of tobacco, in the event of a sale of snus, the notification must be made and security for the snus pledged for each movement.

The amendments are prompted by the proposals in Sections 3.4 and 3.6.

Section 38(c)

The Section introduces a new opportunity for a person engaged in or intending to engage in distance selling of chewing tobacco or other forms of tobacco on more than one occasion to apply to be approved as a registered distance seller of chewing tobacco or other forms of tobacco.

It follows from the *first paragraph* that approval may be granted if the seller, on the basis of his or her financial circumstances and circumstances in general, is fit to act as a registered distance seller of chewing tobacco or other forms of tobacco.

Under the provisions of the *second paragraph*, a registered distance seller must pledge security for payment of the excise duty on the tobacco dispatched from the other EU member state. The provisions on security correspond to what applies to distance sellers of harmonized goods under Section 16.

Under the *third paragraph*, approval as a registered distance seller shall be revoked if the conditions for approval no longer exist or if the registered distance seller so requests. A decision to revoke applies with immediate effect, unless otherwise specified in the decision.

Unofficial translation

The *fourth paragraph* regulates what happens if a registered distance seller is declared bankrupt. The approval is transferred to the bankruptcy estate, which also becomes liable to pay excise duty on goods for which the excise duty liability becomes chargeable after the bankruptcy decision. There is no requirement for the bankruptcy to take place according to Swedish legislation. The provisions shall also apply to corresponding procedures under other countries' legislation.

The amendments are prompted by the proposals in Sections 3.4 and 3.6.

Section 38(d)

This new Section contains provisions that the recipient of snus, chewing tobacco or other forms of tobacco dispatched to Sweden during distance selling shall be liable to pay excise duty instead of the seller, if the seller has not pledged security for the excise duty in Sweden. The recipient will thus have an interest in making sure that the seller fulfils his or her obligations. The provision corresponds to Section 16(c).

The amendments are prompted by the proposals in Section 3.4.

Section 38(e)

This new Section states that persons who are not approved as a stock keeper and who commercially import or receive snus, chewing tobacco or other forms of tobacco from another EU member state other than by distance selling shall notify the goods to the Swedish Tax Agency and pledge security for payment of the excise duty on the tobacco.

The amendments are prompted by the proposals in Section 3.6.

Section 39

This Section specifies when the excise duty liability becomes chargeable.

Points 1–4 have been amended by addition of the words “other forms of tobacco”.

A new *point 5* has been introduced whereby it is prescribed that the excise duty liability for sellers or recipients in event of distance selling of snus, chewing tobacco or other forms of tobacco becomes chargeable when the tobacco is imported into Sweden.

A new *point 6* specifies when the excise duty liability becomes chargeable for the person in possession of goods that are excisable in Sweden without the excise duty having been reported here even though he or she should have done so. The excise duty liability becomes chargeable when the goods enter into the person in question's possession and it is irrelevant that they may have been consumed before taxation takes place.

Point 7 on the chargeability of the excise duty liability when importing tobacco from third countries corresponds to the current point 5.

The amendments are prompted by the proposals in Sections 3.4 and 3.6.

Section 39(a)

Unofficial translation

This new Section regulates two exemptions from the liability to pay excise duty for stock keepers who, in accordance with Section 39(1)(b), use snus, chewing tobacco or other forms of tobacco for purposes other than sale.

It follows from the *first paragraph* that snus, chewing tobacco or other forms of tobacco which has been completely destroyed under the supervision of the Swedish Tax Agency are exempt from liability to pay excise duty. This paragraph corresponds to Section 18, first paragraph (2).

The *second paragraph* introduces an exemption for a stock keeper who recycles snus, chewing tobacco or other forms of tobacco during the manufacture of excisable tobacco products or other forms of tobacco. The words “of excisable tobacco products or other forms of tobacco” are intended to clarify that it should be possible to manufacture harmonized goods from non-harmonized goods and vice versa without the tobacco being subject to double taxation. The provision corresponds to what is prescribed in Section 21 for warehouse keepers.

The amendments are prompted by the proposals in Section 3.5.

Section 40

This Section prescribes, firstly, that the Swedish Customs Authority decides on tobacco excise duty for goods not owned by an approved stock keeper, and secondly, that certain provisions regarding refund of excise duty and deductions applicable to harmonized goods also apply to non-harmonized tobacco. Changes are made in the *second* and *third paragraphs* through addition of the words “and other forms of tobacco”. The second paragraph also introduces a reference to Section 31 according to which a refund is allowed in certain situations where the Swedish Customs Authority has made a decision under Chapter 2 Sections 16 or 16(a) of the Act (1998:506) on Excise Duty Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products.

A new *fourth paragraph* has been introduced prescribing that an approved stock keeper can deduct an amount equal to the excise duty on the cigarettes, cigars, cigarillos or smoking tobacco which the stock keeper has recycled during the manufacture of snus, chewing tobacco or other forms of tobacco. Double taxation is thereby avoided during such manufacturing. The provision corresponds to what is prescribed in Section 33 for warehouse keepers.

The amendments are prompted by the proposals in Section 3.5.

Section 40(a)

The words “or other forms of tobacco” have been added to the *first paragraph* of this Section. The provision prescribes that the person who pays excise duty in Sweden for chewing tobacco or other forms of tobacco which is then delivered to a buyer in another EU member state, shall, upon application, be granted an excise duty refund, provided the other conditions under the second paragraph are met.

The amendments are prompted by the proposals in Section 3.4.

Section 42

This Section contains provisions regarding the annual tax recalculation. The changes in the *first paragraph* of the Section mean that the year for the annual recalculation of excise duty is adjusted and the new provision in Section 35(a) is added.

Unofficial translation

The amendments are prompted by the proposals in Section 3.3.

6.2 The proposal regarding an act to amend the Act (1994:1551) on Freedom from Taxation upon Import, etc.

Chapter 3

Section 2

The definitions which were previously in Section 4, third paragraph, have been moved to this new Section. The change is made for editorial reasons as the terms are used in several sections.

In addition, the list has been supplemented with a new definition of the term tobacco product. The term tobacco product includes, firstly, the harmonized goods cigarettes, cigars, cigarillos and smoking tobacco, and secondly, the non-harmonized goods snus, chewing tobacco and other forms of tobacco. The terms included in the definitions have the same meanings as in the Act (1994:1563) on Tobacco Excise Duty. The term tobacco product thus has the same meaning as in Section 1, fourth paragraph, of the Act on Tobacco Excise Duty. It should be noted that the term tobacco product may have a somewhat different meaning in other statutes. Also see the commentary to Section 3.

The amendments are prompted by the proposals in Section 3.7.

Section 3

The information that was previously in Section 4, second paragraph, and Section 7, second paragraph, that the provisions in Chapter 4 Section 4 of the Alcohol Act (2010:1622) and Chapter 5 Section 20 of the Act (2018:2088) on Tobacco and Related Products specifying that in some case alcohol products and tobacco products may not be imported, has been moved to this new Section. The change is made for editorial reasons as the information is important for the application of several provisions.

The provision specifies that the information refers to goods that constitute tobacco products, electronic cigarettes and refill containers under the Act on Tobacco and Related Products. In the Act on Tobacco and Related Products, the term tobacco products has the meaning that follows from Article 2(4) of Directive 2014/40/EU of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

The amendments are prompted by the proposals in Section 3.7. Also see Section 3.2.

Section 4

This Section contains regulations regarding the exemption from excise duty for travellers upon import as well as certain definitions used in the Act.

The second and third paragraphs have been moved to Sections 3 and 2, respectively. The amendments are prompted by the proposals in Section 3.7.

Section 7

The amendment means that the provision in the previous second paragraph has been removed. The provision provided information that Chapter 5 Section 20 of the Act on Tobacco and Related Products

Unofficial translation

contains provisions to the effect that in some cases alcohol products and tobacco products may not be imported. This information is instead provided in the new Section 3.

The amendments are prompted by the proposals in Section 3.7.

Chapter 4

Section 3

This Section contains a table with standard flat rates for customs and excise duty that can be used instead of the customs and excise duty that would otherwise have been charged if the conditions specified in Chapter 4 Section 1 were met. The table is supplemented with an amount for other forms of tobacco that corresponds to that which already applies for smoking tobacco. The term other forms of tobacco is defined in Chapter 3 Section 2.

The amendments are prompted by the proposals in Section 3.7.

6.3 The proposal regarding an act to amend the Act (1998:506) on Monitoring of Transportations etc. of Alcohol Products, Tobacco Products and Energy Products Subject to Excise Duties

Chapter 1

Section 1

This Section contains a description of the contents of the Act. An addition to the *second paragraph* clarifies that the Act also applies to certain movements not subject to Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.

The amendment is prompted by the proposals in Section 3.6.

Section 2

This Section specifies what the terms excise goods, tobacco product, alcohol product and energy product mean in the Act.

The *second paragraph* amends the reference to Section 1, new fourth paragraph, of the Act (1994:1563) on Tobacco Excise Duty under which tobacco product refers to both cigarettes, cigars, cigarillos and smoking tobacco as well as snus, chewing tobacco and other forms of tobacco. Also see Sections 3.2 and 3.6.

Section 4

This Section specifies what excisable means in the Act.

By the reference in the *first paragraph* to the person who is excisable under Section 36(3, 5 or 6) of the Act of Tobacco Excise Duty, the term excisable also includes persons who, without being approved stock keepers, commercially import or receive snus, chewing tobacco or other forms of tobacco from another EU member state and persons who may be excisable during distance selling of snus, chewing tobacco or other forms of tobacco under Sections 38(b) — 38(d) of the Act on Tobacco Excise Duty.

Unofficial translation

The amendment is prompted by the proposals in Section 3.6.

Chapter 2

Section 13(a)

This Section contains provisions that excise duty which has been determined by the Swedish Customs Authority shall be remitted in certain cases. The situations covered by the Section correspond to the situations which, under Sections 16 and 16(a), shall lead to a decision not to release a product if a preventive detention terminates.

The *second paragraph* concerns a situation where the person who can be presumed to lay claim to the goods if a preventive detention is terminated is under 18 years of age. Through the amendment, the scope of the provision corresponds to the scope of the prohibition on importing goods that follows from Chapter 5 Section 20 of the Act (2018:2088) on Tobacco and Related Products. Since snus, chewing tobacco and other forms of tobacco are not such taxed tobacco products as referred to in Section 8(a) of the Act on Tobacco Excise Duty, a reference to snus, chewing tobacco and other forms of tobacco has been added to the provision.

The *third paragraph* concerns a situation where it is likely that the product is intended to be offered for sale in Sweden, and such a sale would be manifestly contrary to Chapter 3 Section 1, third paragraph, of the Act on Tobacco or Related Products. A reference to snus, chewing tobacco and other forms of tobacco has been added to the provision in the same way as in the second paragraph.

It should be noted that in the Act on Tobacco and Related Products, the term tobacco product has a somewhat different meaning than the meaning that follows from Article 2(4) of Directive 2014/40/EU of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

Also see Sections 3.2 and 3.6.

Section 16

This Section contains provisions that, in certain cases, the Swedish Customs Authority may decide to refuse to hand over an excise good which has been seized. In the event a preventive detention of a tobacco product ceases in accordance with the second paragraph, a decision shall be made not to hand this over if the person claiming the product is under 18 years. Through the amendment, the scope of the provision corresponds to the scope of the prohibition on importing goods that follows from Chapter 5 Section 20 of the Act (2018:2088) on Tobacco and Related Products.

Also see Sections 3.2 and 3.6.

Chapter 3

Section 5(a)

This Section contains certain specific amounts of excise duty to be used in the event a decision on excise duty under Section 5, first paragraph, lacks sufficient information to determine the excise duty. The table with standard flat rates has been amended so that certain items such as cigarillos, cigars and smoking tobacco have been removed from the list as the amount of excise duty already follows from the Act on Tobacco Excise Duty. Therefore, the definition of cigarillo has also been removed from the provision. Otherwise, existing items have been adjusted so that the standard flat rates better

Unofficial translation

correspond to current tax levels under the Act (1994:1564) on Alcohol Excise Duty and the Act on Tobacco Excise Duty. The amendments are prompted by the proposals in Section 3.6.

Chapter 4

Section 1

This Section contains provisions that a special charge (transport surcharge) shall be imposed in certain situations where prescribed obligations have not been complied with.

As a result of the amendment in the *second paragraph (1)*, a transport surcharge shall be imposed on a person liable to pay excise duty if the reporting obligation or obligation to pledge security for payment of excise duty arising from Section 38(e) of the Act on Tobacco Excise Duty has not been complied with. Hence it concerns persons who are not approved as a stock keeper and who commercially import or receive snus, chewing tobacco or other forms of tobacco in a manner other than by distance selling.

As a result of the amendment in the *second paragraph (2)*, a transport surcharge shall be imposed on a seller who, during distance selling of snus, chewing tobacco or other forms of tobacco, has not pledged security in the manner prescribed. This corresponds to what applies for sellers during distance selling of cigarettes, cigars, cigarillos or smoking tobacco. The provision includes both such sellers as are subject to Section 38(b) of the Act on Tobacco Excise Duty and registered distance sellers of chewing tobacco or other forms of tobacco under Section 38(c) of the Act on Tobacco Excise Duty.

The provisions of the *third and fourth paragraphs* do not apply when moving snus, chewing tobacco or other forms of tobacco, as some requirements for accompanying documents during movement of such goods do not follow from the Act on Tobacco Excise Duty.

The amendments are prompted by the proposals in Section 3.6.

6.4 The proposal regarding an act to amend the Act (1999:445) on Export Shops

Section 4

This Section regulates sale of untaxed Union goods in export shops at airports. As a result of an amendment to the *second paragraph (1)*, other forms of tobacco has been added to the list of goods which can be sold. This term is defined in the *third paragraph* by a reference to Section 35(a) of the Act (1994:1563) on Tobacco Excise Duty; Also see the commentary to Chapter 3 Section 4 of the Act (1994:1551) on Freedom from Taxation upon Import, etc.

The amendments are prompted by the proposals in Section 3.7.

Section 5

This Section specifies the requirements that are imposed on the person who operates an export shop if certain goods are to be sold in the shop. As a result of an amendment to the *first paragraph*, the words “other forms of tobacco” have been added to the list of goods whose sale requires an approved stock

keeper. Furthermore, an editorial change has been made in the first sentence in that the harmonized tobacco products referred to in the provision are listed. This avoids the term “other forms of tobacco” being misunderstood.

6.5 Proposal regarding an act to amend the Act (2001:181) on Data Processing in the Swedish Tax Agency’s Tax Operations

Chapter 2

Section 12

This Section regulates certain exemptions from the main rule in Chapter 2 Section 11 regarding when the Swedish Tax Agency must erase data and documents that are processed in the so-called tax database. It follows from the *third paragraph* that data and documents about registered stock keepers under, *inter alia*, the Act (1994:1563) on Tobacco Excise Duty shall be erased seven years after expiry of the calendar year in which the approval was revoked. The amendment also means that registered distance sellers of chewing tobacco and other forms of tobacco under the Act on Tobacco Excise Duty are subject to the provision.

The amendment is prompted by the proposals in Section 3.7.

6.6 The proposal regarding an act to amend the Tax Procedures Act (2011:1244)

Chapter 7

Section 1

The addition in *point 10(c)* means that persons who are approved as registered distance sellers of chewing tobacco or other forms of tobacco under the Act (1994:1563) on Tobacco Excise Duty are also registered with the Swedish Tax Agency. This means, *inter alia*, that these persons must, in accordance with Chapter 26 Section 6 of the Tax Procedures Act, submit an excise duty declaration for the sale of such goods for each accounting period.

The amendments are prompted by the proposals in Section 3.7.

Chapter 37

Section 7(a)

This Section regulates the Swedish Tax Agency’s possibilities to order a person who has been granted a refund or offset of excise duty under certain excise duty acts to submit the information required by the Agency to verify that it has submitted true and complete information. The Section is supplemented with a reference to Chapter 53 Section 5(1)(e), which means that the Swedish Tax Agency may also order a person who has been granted a refund of excise duty under the Act on Waste Excise Duty.

Unofficial translation

The amendments are prompted by the proposals in Section 5.2.

Section 9(a)

This Section specifies that the Swedish Tax Agency may, in certain cases, order the person who is or who can be presumed to be accountable under the Accounting Act (1999:1078), or who is a different legal person than an estate of a deceased person, to submit information about a legal transaction with someone else, a so-called third party order. The Section is supplemented with a reference to Chapter 53 Section 5(1)(e), which means that an order may also refer to circumstances important for the verification of information in an application for a tax refund under the Act on Taxation of Waste being true and complete.

The amendments are prompted by the proposals in Section 5.2.

Chapter 41

Section 3

This Section specifies who can be audited. The Section introduces a new *point (13)*, according to which the person who has applied for approval as a registered distance seller of chewing tobacco and other forms of tobacco under the Act on Tobacco Excise Duty can be audited.

The amendment is prompted by the proposals in Section 3.7.